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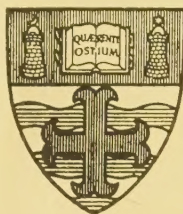


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# PRIZE DROITS

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A REPORT TO H.M. TREASURY

ON

## DROITS OF THE CROWN AND OF ADMIRALTY

IN

TIME OF WAR

BY

**H. C. ROTHERY, C.B.,**

Registrar of the High Court of Admiralty, 1853-1878.

REVISED AND ANNOTATED

BY

**E. S. ROSCOE,**

Admiralty Registrar.



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## PREFATORY NOTE BY EDITOR.

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Mr. H. C. Rothery, C.B., who was Registrar of the High Court of Admiralty from 1853 until 1878, and who was in that year appointed Wreck Commissioner, added to a large knowledge of all matters connected with the Admiralty Court unwearied industry and great ability. The following pages exemplify this statement, showing as they do much research and a power of co-ordinating the results of it.

The work was undertaken at the request of the Treasury during the Crimean War, but was not completed till April 1857, and was primarily compiled for a practical purpose only, namely, to ascertain the practice in regard to the distribution of the proceeds of Droits of the Crown and of Admiralty.

The distinction between captures, which resulted in a gain either to the Sovereign or to the Lord High Admiral, became of historical value only after Droits of Admiralty were, in 1702, surrendered by Prince George of Denmark, then Lord High Admiral, to the Crown. But, as the proceeds of a prize captured at sea during hostilities by commissioned ships became the property of the captors, there were during the maritime wars of the eighteenth century not a few disputes between captors and the Crown when there was a doubt whether or not a ship or cargo was a Droit of Admiralty. During the present war most of the ships and cargoes seized were nominally Droits of Admiralty, but as by an Order in Council of August 28th, 1914, the actual captors of a ship or cargo at sea are no longer themselves to receive the value of the prize, the difference between Admiralty Droits and prizes captured at sea during war has come to an end, and the net proceeds of all seizures and captures now find their way into the Consolidated Fund, to which, on the readjustment, in 1831, of the Civil List, the proceeds of Admiralty and Crown Droits were henceforth to be paid. (1 Will. iv. c. 25.)

The Report is, further, a comprehensive treatise on the history, law, and practice of this rather obscure subject. And, though more than half a century has elapsed since it was written, and various important works on the British Navy, such as Oppenheim's "*History of the Administration of the Royal Navy*," and Clowes' "*The Royal Navy*," have since been published, its special value does not appear thereby to be diminished. Incidentally also we obtain from the Report some suggestive glimpses of phases of national life during the maritime wars of the eighteenth century which have hitherto been little known.

The original MS., or more probably a copy of it, was contained in a bound volume which reposed on the shelves of the Admiralty Registry in the Royal Courts of Justice until the

beginning of the present war with Germany. It was then searched for information, and in the course of the judgment in the case of the "Roumanian" (Law Reports, 1915, p. 26) some extracts from it were referred to by Sir Samuel Evans, thus bearing out the view of the Lords of the Treasury in their letter of the 17th June 1857, that the Report "may also be referred to on future occasions with much public advantage." In the same judgment the President expressed his opinion that Mr. Rothery's Report ought to be printed. This has now been done, and at the request of the Treasury I have given to the Report such slight editorial attention as seemed desirable.

The Report is published as compiled by Mr. Rothery, except that for greater convenience it has been divided into an Introduction and four Chapters, corresponding to four clear divisions of the subject, and into sections, which make Mr. Rothery's headings more convenient to the reader. References in the text to reported cases have been placed in footnotes, and these also include references to these English Prize Cases which are noted under the heading E.P.C. A few additional notes have also been added, and an index completes the work.

In the Report reference is often made to a Register of Prize Cases which was compiled by Mr. Rothery or by his direction in the course of his investigation. No trace can be found of this Register at the Treasury or in the Admiralty Registry, nor does it appear to be in the custody of the Record Office, whither—if it was an unbound MS., as is probable—it would have been removed, in ordinary course, with other legal papers.

E. S. ROSCOE.

Admiralty Registry,  
Royal Courts of Justice.  
March 1915.

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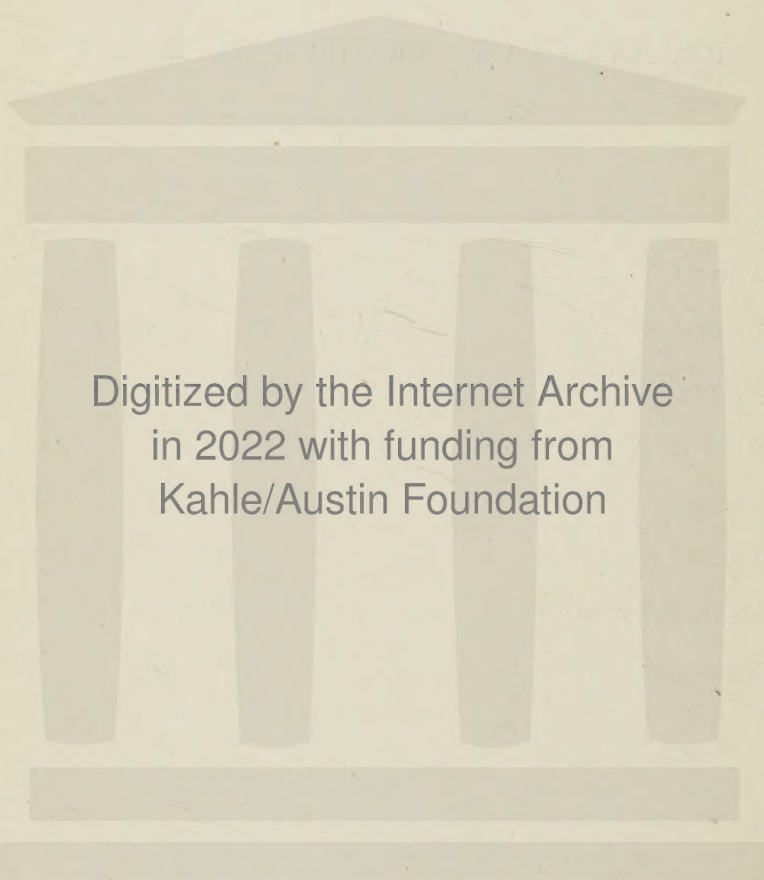


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Principles deduced:—

- (1) That it was not usual to grant in these cases any fixed proportion of the proceeds.
- (2) That the amount granted generally varied from about one-third to one-fourth of the net proceeds - - - - - 132

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# PREFATORY LETTER.

Admiralty Registry,  
Doctors' Commons,  
31st March 1857.

SIR,

I HAVE to acknowledge the receipt of your letter of the 27th of October 1854, stating that you had been commanded by the Lords Commissioners of Her Majesty's Treasury to transmit to me an application from Messrs. Woodhead and Co., Navy agents, in which they pray that the proceeds of the Russian prize "Kamtschatka," captured by the Coast Guard officers at the Folkestone station, may be paid over to them for distribution amongst the captors; and requesting me to ascertain and report "what was the practice during the last war with reference to the distribution of prize money generally, distinguishing the course adopted in regard to captures by ships of war belonging to the King, by private ships of war duly authorised to make captures, by non-commissioned vessels, and also by officers of the Revenue, of Customs or Excise, and others."

Since the date of your letter memorials on behalf of other Revenue cruisers as well as from Custom House officers have also from time to time been referred to me, and in which the memorialists pray that their Lordships will be pleased to grant to them either the whole or a proportion of the proceeds of the several prizes, which they have seized during the late war. To all these memorials the reply must depend upon the decision to which their Lordships come upon the facts I am about to lay before you.

The inquiry which your letter directed is, as will be seen, of a very wide and general character, and has demanded such an extensive research, that my report has been unavoidably delayed somewhat longer than I could have wished. The ordinary duties of my office, which during the last two years have been extremely onerous, arising partly from the war, partly from the increase in the civil business of the Court and the introduction of new rules and modes of proceeding, have left me but little leisure to prosecute this inquiry. Added to which the difficulty and labour has been greatly increased by my having been obliged to collect much of the information, upon which this report is founded, from the voluminous records of the Treasury.

It may perhaps be objected that the inquiry has been somewhat needlessly extended, that a shorter report would have answered every purpose and that, as the cases to which it must principally apply in the late war would be seizures by Revenue cruisers and by Custom House officers, the inquiry ought to have been confined to those cases alone, and not to have aimed at including within it every other description of capture,

whether before or after hostilities, and whether by commissioned or non-commissioned captors.

In reply to such an objection I might simply refer to the terms of your letter and to the words "private ships of war" "duly authorised to make captures;" from which I could not but conclude that, as no commissions had been granted to privateers during the late war, a full and comprehensive report on the whole subject was required, and not one limited to the particular circumstances of the late war.

I must confess, however, that, as soon as I became fully aware of the vast extent of the subject, and the time and labour which would be required to make a satisfactory report upon it, I began to think whether it would not be better to limit my inquiry to the cases of Revenue cruisers and Custom House officers alone; not solely with the view of saving myself trouble, but if possible to avoid delay, which in matters of this kind frequently works great injustice. With this view I applied first of all to the Custom House authorities, but understood from their secretary that all the documents, which could throw any light on the subject, had perished when the Custom House was burnt down. I then applied to the Receiver General of Droits of Admiralty, under whose especial control the proceeds of all such prizes were formerly placed, but I was equally unsuccessful there, for I was informed by him "that the accounts, which alone would have afforded this information, were all destroyed at the fire of the Tower of London."

Under these circumstances no course remained but to examine the whole subject for myself in the best way I could; and in doing so I found captures by Revenue cruisers and Custom House officers so mixed up with captures by King's ships, privateers, and others, that it was impossible to ascertain the regulations in respect of any one class without acquiring a knowledge of those relating to the other classes. And, having been thus, as it were, forced to collect information, scattered here and there through the records of the Treasury throughout a period of more than half a century, I considered that I was bound to place the result of those inquiries in your hands, the more so as I could not find that anything had ever been published on the subject.

I may also state that, when I commenced this inquiry, it was uncertain how far the war might extend and whether nations, at that time neutral, might not sooner or later be dragged into it. Happily this danger has for the present passed away; still no one can say when war may again break out or against whom we may then find ourselves arrayed. Recent events, too, have shown that whatever may be the desire on the part of some nations to abolish privateering and its attendant evils, there are others who still think that the system is essential, not to their true interests only, but to their very existence. So that it is, perhaps, not impossible that the time may come when we shall

again see the whole system of privateering and embargo revived in all its former vigour, in which case the facts contained in this report will prove, perhaps, not to have been collected in vain. Experience, too, shows that when such a time arrives other more important duties render it almost impossible to give matters of this nature the consideration which they demand.

I would add that the inquiry, although it may be regarded as rather of a dry and technical character, has not been without its interest to me; it has been the means of my acquiring much useful information on the subject of prize generally and of droits in particular, and I shall be amply repaid for all my trouble if it should answer the ends which their Lordships would seem to have had in view.

Sir C. E. Trevelyan, K.C.B.,  
 &c.,      &c.,      &c.

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## INTRODUCTION.

## SECTION 1: PRIZE GENERALLY AND THE RIGHT THERETO.

With a view to a full consideration of the whole subject it will, in the first place, be desirable to state what prize is, and to whom it properly belongs.

The prize, which is the particular object of the present inquiry, may properly be called naval prize. It includes all ships and vessels, whether armed or merchant men, belonging or adhering to the enemy, whether captured at sea or within the enemy's territory or in the ports of this country. It includes all contraband of war and, so far as this country was concerned, it included, until the Russian war, all goods belonging to the enemy, either found on board an enemy's or a neutral ship. In the war with Russia, however, Her Majesty waived "the right of "seizing enemy's property on board a neutral vessel unless it "were contraband of war." To these may also be added in the terms of the Prize Act,\* Russia 1854, all "arms, "ammunition, stores of war, goods, merchandise, and treasure "belonging to the State or to any public trading company of "Her Majesty's enemies," seized on the capture of any fortress or possession either by a naval force alone or by a conjoint force of the army and navy. Arms, ammunition, stores of war, &c., seized by a military force alone are likewise prize, but they are not naval prize and consequently do not come within the scope of this inquiry.

Now it is an elementary principle of Prize Law that all prize belongs to the State—in monarchies to the Sovereign—*vide* the case of the "Melomane,"† And in the case of the "Marie Françoise"‡ Lord Stowell observes that "all rights of "prize belong originally to the Crown, and that the beneficial "interest derived to others can proceed only from the grant "of the Crown." If the Crown had made no grant of any of these rights, every prize would necessarily have belonged to the Sovereign *jure coronæ*, and must have been condemned as a droit to the Crown.

## SECTION 2: DROITS OF ADMIRALTY.

The Crown has, however, by very ancient grants ceded a portion of those rights in perpetuity to the Lord High Admiral. The history of those grants is as follows§:—

\* 17 Vict., cap. 18, sec. 6.

† 1 C. Rob. 41; 1 E.P.C. 419.

‡ 6 C. Rob. 293; 1 E.P.C. 559.

§ On this subject, *see* Early Prize Jurisdiction and Prize Law in England, by R. G. Marsden; English Historical Review, Vol. XXIV., p. 675; Vol. XXV., p. 243. 1910.

In very early times, when the office of Lord High Admiral was distinct from that of the Sovereign, it was thought expedient to assign a certain portion of the Crown's rights of prize to maintain the dignity and importance of that high office. During the Civil Wars, however, those ancient grants fell into obscurity and, as Sir Leoline Jenkins observes, it was the policy of Cromwell to expunge as much as possible from record the very name and office of the Lord High Admiral and all the rights belonging to it. In consequence of this it became necessary at the Restoration to institute an inquiry into the nature of those rights for the purpose of ascertaining their just limits. The result of the discussions, which then took place and which are also to be found in the works of Sir Leoline Jenkins, was that on the 6th day of March 1665-66 an Order in Council was passed by which the rights of the Lord High Admiral in time of war were clearly defined. By the two first clauses of this Order\* it was declared :—

“ 1. That all ships and goods belonging to enemies, coming into any port, creek, or road of this His Majesty's Kingdom of England or of Ireland, by stress of weather or other accident, or by mistake of port, or by ignorance not knowing of the war, do belong to the Lord High Admiral; but such, as shall voluntarily come in, either men-of-war or merchantmen, upon revolt from the enemy, and such, as shall be driven in and forced into port by the King's men-of-war, and all such ships as shall be seized in any of the ports, creeks, or roads of this Kingdom, or of Ireland, before any declaration of war, do belong unto His Majesty.”

“ 2. That all enemies' ships and goods casually met at sea and seized by any vessel not commissioned do belong to the Lord High Admiral.”

Without entering into any very minute or critical examination of the words of this Order, it may be sufficient for our purpose here to state that all prizes, captured during hostilities either in port or by non-commissioned vessels or persons, belong of right to the Lord High Admiral, and the proceeds of such prizes when condemned become droits of Admiralty.

In recent times it has been usual for the office of Lord High Admiral to be held in commission, so that the Sovereign is himself the Lord High Admiral of this Kingdom. But Lord Stowell has observed in the case of the “*Gertruyda*”† that, “as long as the office of Lord High Admiral, though now residing in the person of His Majesty, continues in this Kingdom to have a legal existence, it is extremely proper that the droits

\* 1 C. Rob. This Order is set out at p. 231; 1 E.P.C. at p. 121.

† 2 C. Rob. 293; 1 E.P.C., 559.

“ and perquisites of the office should continue as anciently distinguished, and although the difference may not be very important as to any immediate consequences under the present application of them (which is directed by the Treasury and not by the Admiralty), it is still fit that they should be strictly determined, and with as much exact observance of the ancient rules, as if the proceeds were carried in the ancient and distinct course.”

Hence, then, arises the distinction between droits of the Crown and droits of Admiralty (a distinction which we shall hereafter find to be of very considerable importance); the former including all cases, where the Crown is still entitled to the prize in virtue of its Sovereignty and inherent prerogatives; the latter those cases in which the Crown has ceded its rights to the Lord High Admiral, and which consist, as we have stated, of captures effected *during hostilities* either in port or by a non-commissioned captor. Such prizes were ordinarily placed in the custody of the Marshal of the Court of Admiralty, and upon condemnation were sold under the decree of the Court, and the proceeds paid into the Admiralty Registry.

### SECTION 3: CAPTURES BY COMMISSIONED SHIPS IN TIME OF WAR.

But besides this grant to the Lord High Admiral, which is perpetual and inalienable, and which nothing short of an Act of Parliament can restore, the Crown has now for some time past been accustomed at the commencement of every war to issue a proclamation ceding to its own ships of war and to private ships of war, duly commissioned, the beneficial interest in all captures which may be made by them during the dependence of that war. And, as by far the greatest number of prizes arise from captures by commissioned ships in time of war, it may not be either uninteresting or unimportant to trace the history of this grant.

In very early times before the reign of Henry VIII. there was, it would seem, no regular Royal Navy, no ships of war fitted out and equipped at the charge of the King or of the nation generally. But the ports and maritime towns of the Kingdom, on a summons from the Crown, fitted out their respective quota of ships of war for the public service, which met at a certain place of rendezvous and there placed themselves under the command of the King or his Admiral, by whom they were thenceforth paid. Besides these there were also occasionally ships of war fitted out and maintained at the expense of some seigneur or nobleman, or other wealthy individuals, and which answered very much to the privateers of recent times.



The manner in which prizes taken by these vessels were distributed, is recorded in the Black Book of the Admiralty—Book A., Art. 19 and 20\* :—

“Item sil avient que desoubz les gages du Roy, sur la mer, ou en ports, biens des ennemys estre gaignez par toute la flotte, ou par parcelle d’icelles, donques aura & prendra le Roy de toutes maneres diceulx biens la quarte partie, & les [seigneurs] des Nefs une autre quarte partie, & l’autre moitie diceulx biens auront les gaigneurs diceulx ; la quelle moitie doit estre entre eux egalement parties, de la quelle moitie aura l’Admiral en chacune nef deux shares—c’est a dire, autant comme deux mariners, s’il est present au temps que la prise est faite ; et s’il est absent, donques il n’aura, forsque de chacun vessel ung share. Et iceulx de la flotte qui sont hors de veue, autemps de la prise, n’auront nulle parte dicelles, s’ils ne sont segglants vers la prise, & dedens la veue, perainsi qu’ils soient semblables d’aider aux captours de la prise, avec leurs voiles, se mestier estoit.”

“Item se hors de gages du Roy aucunes biens par Galliot, ou autres, soient pris sur la mer, donques le Roy ne chalengera nul droit, ne proprement aura nul part ; mais iceulx qui gaignez les auront, forspris qui l’Admiral en aura deux shares, en chacune nef, come dit est—c’est a dire, autant comme deux hommes, l’une share avec la mayne, & l’autre avec la vitaille & la nef.”

From these passages we see that the practice at that early period was this ; if a prize was taken by a ship of war in the pay of (not fitted out, for none as we have said were then fitted out by) the King, one-fourth of the proceeds went to the King, one-fourth to the seigneurs of the ships, and the remaining half to the actual captors ; if, on the other hand, the capturing ship

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\* The Black Book of the Admiralty, with an Appendix, edited by Sir Travers Twiss, Q.C., D.C.L., published under the authority of the Lords Commissioners of Her Majesty’s Treasury, under the direction of the Master of the Rolls, Vol. I. (1871), p. 20. The following is the translation in the Black Book of Arts. 19 and 20 :—

Item, if it happens that under the King’s pay upon the sea or in ports enemies goods be taken by the whole fleete, or by part thereof, then the King shall have and take the fourth part of all manner of the said goods, and the owners of the shippes another fourth part, and the other halfe of the said goods shall belong to those who took them, which halfe ought to be shared equally between them, out of which halfe the admiral shall have out of each shipp two shares, that is to say, as much as two mariners, if he is present at the tyme when the prize is taken, and if he be absent then he shall have but one share out of each shipp. And those of the fleete which are out of sight at the time of the seizure shall have noe share out of it, unless they are sailing towards the prize and in her sight, soe that they are likely by sailing to helpe the takers of the prize if need be.

Item, if any goods be taken by privateers, or others out of the King’s pay, then the King shall challenge no manner of right, nor shall have any property therein ; but these who take them shall have them, saveing that the admirall shall have two shares thereof each shipp as is above said (that is to say) as much as two men. In one share with la main (hands) and the other with the victual of the shipp.

was not in the pay of the King, the Crown could claim no part whatever of the prize.

Henry VIII. put the Navy of England upon a better footing, built ships of war, and erected shipyards and magazines; but so different was the state of things at that time from what it is now that in a naval expedition, which was sent out in the third year of that reign, out of eighteen ships of which it consisted, all except one, the "Prince Regent," were hired vessels. What was, however, new was this, that they were all armed, equipped, and maintained at the King's sole charge.

There is a document preserved in Rymer,\* respecting this expedition, and which shows the pay of the Navy at that time, and the manner in which prize money was then distributed. It was a kind of contract between the King and the admiral. After stating that the admiral was to have 10s. a day, each of the captains 1s. 6d. a day, and the soldiers and mariners 10s. per month, it proceeds to say, "forasmuch as  
" our Sovereign Lord the King at his costs and charges  
" victualleth the said Army and Navy, the said admiral shall  
" answer the King one half of all manner of gains and win-  
" nings of the werre, one ship royal being of the portage of  
" 200 tons, with the ordinance and apparel of every such  
" prize that shall be taken, and reserving to the King all  
" artillery contained within any other shippe or shippes, by  
" them to be taken."

In the reign of Queen Elizabeth the Royal Navy became very considerable, in so much that in the year 1573 it is stated to have consisted of one hundred and forty-six ships. In the succeeding reigns it probably increased, but not so rapidly as before. But under Cromwell it appears to have improved very greatly as well in the number and character of the ships, as in skill and experience of its officers; for "whereas formerly  
" the captains and lieutenants being men of quality or estate,  
" who only valued their employments for the honour of the  
" command, concerned themselves chiefly in the military part,  
" leaving the whole care of navigating the ships of war to the  
" masters."†

In 1649 an Ordinance‡ of the Commonwealth was passed, directing that in all prizes taken from the enemies of the Commonwealth, a moiety should be given to the captors, and that the other moiety should be deposited in a common treasury, to raise a fund for wounded officers and other charitable purposes, rewards, &c., and that for all enemy's ships of war burnt, sunk, or destroyed there was to be paid for an admiral's ship 20*l.* per gun, for a vice-admiral's 16*l.* per gun, and for other ships of war 10*l.* per gun.

\* Vol. 13, p. 326.

† A General Treatise of the Dominion and Laws of the sea. . . . .  
By Alexander Justice, London, 1705, 4<sup>o</sup>. The 3rd edition, enlarged, appeared without name of author about 1710.

‡ Cap. 21. See Scobell's Acts and Ordinances, Part II., p. 12; Firth and Rait's Interregnum Acts, Vol. II., pp. 9, 72.

In the reign of Charles II., in 1661, an Act\* passed for the better regulation and discipline of the Navy, in which the interest of captors in prize is only incidentally mentioned in the 8th article, which directs that nothing should be taken out of a prize ship till condemned; that an entire account should be given of the whole without fraud, on pain of such punishment as the court martial or court of Admiralty shall inflict, *except everything above the gun deck*, but arms, ammunition, tackle, furniture, or stores, which are not to be touched.

This permission of pillage to a certain extent, although undoubtedly of very great antiquity, naturally led to a lawless spirit amongst the crews, and accordingly it was by the 4th and 5th of William and Mary, cap. 25, abolished; and in lieu thereof the Act directs "that in every prize made by a private man-of-war the proceeds of the cargo shall be divided into five parts, whereof four should be paid to those interested in the privateers and the remaining fifth to Their Majesties; and that the captured ship, ammunition, tackle, and furniture should belong to those interested in the privateers. That in prize taken by His Majesty's ships of war the proceeds should be divided into three parts, whereof one-third should be divided amongst the ship's crew, one-third to the Treasurer of the Navy for the relief of persons wounded and the widows, children, and parents of persons slain, and that the remaining third should be apportioned to Their Majesties' use."

There was also a provision by this Act for granting a bounty of 10*l.* for every gun on the taking or destroying of any ship of war or privateer belonging to the enemy.

Up to this time, then, the rates or proportions, in which King's ships and privateers appear to have been remunerated for captures, effected by them during hostilities, would seem to have been as follow:—

Previous to the reign of Henry VIII., where the ship was in the King's pay, the ship's company took one-half of all prizes, the seigneurs or owners, one-quarter, and the King, one-quarter; privateers took the whole.

During the reign of Henry VIII., in the case of ships fitted out and maintained by the King, one moiety went to the ship's company, the other moiety to the King.

Under the Commonwealth all ships being fitted out and equipped by the nation, one moiety went to the captors, the other moiety to the Treasurer of the Admiralty to raise a fund for pensions, rewards, &c.

Under William and Mary, in the case of ships of the Royal Navy, one-third went to the ship's company, one-third to the Treasurer of the Navy to form a fund, and one-third to the Crown, but in the case of privateers the whole of the ship and four-fifths

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\* 13 Car. II. c. 9 (repealed by 22 Geo. II. c. 33).



of the cargo went to the captors, one-fifth only of the latter being reserved for the Crown.

So that up to this period private ships of war stood in a very favourable position in regard to prize money, the Crown, prior to the reign of Henry VIII., taking no part of the proceeds, and even under William and Mary reserving but one-fifth of the cargo only; whereas ships in the Royal pay, prior to Henry VIII., received but one moiety of the proceeds, or three-fourths if the seigneur's rights are to be included, and under William and Mary, King's ships received but one-third of any captures they might make during hostilities. This distinction was doubtless made with a view to encourage the fitting out of private ships of war, and to reimburse the owners in the expenses of their maintenance and equipment. We shall hereafter see how completely this practice was reversed.

Frequent complaints, however, now began to be made of the little encouragement given naval officers, and the low rate of their pay; and pamphlets were written showing the situation of an officer in the French Navy to be more advantageous than in our own. Various remedies were suggested and at length in the year 1708 the Act,\* which is generally called the first Prize Act, was passed granting the whole benefit of prize captured during the then existing hostilities to the commissioned captors. "On what grounds," says the learned author of the "*Collectanea Maritima*," from which almost all these particulars have been obtained, "a matter, which concerned chiefly the interest of the Crown and which sprang from that indubitable prerogative of the Crown, the exercise of war, came to be transferred and mixed with subjects of general legislation, is not, as far as my observation has been able to discover, anywhere explained.†"

The sixth section of that Act declares that "for the better and more effectual encouragement of the sea service, be it further enacted by the authority aforesaid, that from and after the said six and twentieth day of March 1708, if any ship or ships of war, privateer, merchant ship, or other vessel shall be taken as prize by Her Majesty's ships of war or privateers and adjudged as lawful prize in any of Her Majesty's Courts of Admiralty, the flag officer or officers, commander or commanders and other officers, seamen and others, who shall be actually on board such ship or ships of war, or privateers, which shall so take such prize or prizes, shall after condemnation have the sole interest and property in such prize or prizes so taken and adjudged to their own use without further account to be given for the same; such prizes to be sold by such person or persons as shall be authorised and appointed so to do by the commander or commanders, and other officers

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\* 6 Anne, cap. 13.

† *Collectanea Maritima*, by Christopher Robinson, LL.D. London, 1801, p. 188 (note).

“ of such ship or ships, as shall take such ship or ships, or the  
 “ major part of them, under their hands and seals ; and the  
 “ whole produce thereof to be divided or distributed amongst  
 “ the said officers, seamen and others, according to their  
 “ respective shares, in manner, form and proportion as by Her  
 “ Majesty’s most gracious proclamation, to be issued for that  
 “ purpose, shall be directed and appointed ; any law, statute,  
 “ provision or declaration to the contrary thereof in any wise  
 “ notwithstanding.”

And by another section of the same Act (section 8), with a view to encourage the capture of ships of war and privateers belonging to the enemy, it was further enacted that, if in any action any ship of war or privateer shall be taken from the enemy, five pounds shall be granted to the captors “ for every  
 “ man, which was living on board such ship or ships so taken  
 “ at the beginning of the engagement between them.”

These grants, as well in regard to the proceeds of the prizes as to the bounty money, although limited by the Act of Queen Anne to the then existing war, have been renewed by special Acts passed on the breaking out of almost every subsequent war from that period. It must, however, be borne in mind, as Lord Stowell observes in the case of the “ *Marie Françoise*,\*” that “ the grant to captors is nothing more than the mere  
 “ temporary transfer of the beneficial interest ; the Crown  
 “ could not be chargeable with a violation of any public law,  
 “ if it did not issue the grant ; and though the practice of  
 “ issuing it after the commencement of every war has been  
 “ so constant in later times, as to authorise the expectation  
 “ of the continuance, it still is to be considered as the  
 “ occasional act of the Crown’s bounty, by which not the  
 “ right but the mere beneficial interest of prize is conveyed  
 “ for a time.” The title deeds, so to speak, under which commissioned captors are entitled to claim for their own benefit the whole proceeds of any prizes captured by them during hostilities, are the Proclamation and the Prize Act ; and if at the commencement of any war these were not issued, the prizes captured during that war even by commissioned vessels would be condemned as droits to the Crown ; and indeed I shall have occasion to show that this was actually done in one of the wars, which occurred in the early part of the present century.†

And here it should be observed that in issuing the Prize Proclamation the Crown acts merely in its sovereign capacity, not in its character as Lord High Admiral. So that the Proclamation and the Prize Act confer on commissioned captors an interest merely in those captures, which, but for those two instruments, would have become droits of the Crown. They give them no claim whatever to captures effected in port, which,

\* 6 C. Rob. 282 ; 1 E. P.C. 559.

† See p. 93.

as we have seen, belong to the Lord High Admiral, but only to captures made at sea, which, but for the Proclamation, would have become droits of the Crown. Nor do they confer on non-commissioned captors any interest in any captures, which they might make even during hostilities, whether in port or at sea; for the Lord High Admiral is entitled to all such. This distinction it is most important to bear in mind, and it shows why we must still continue to distinguish between droits of Admiralty and droits of the Crown, although both under present arrangements vest in the same person, the Sovereign.

#### SECTION 4: RESERVED DROITS OF THE CROWN.

But besides those captures which have been mentioned above, there were others to which it will be necessary to advert, and in which the Crown reserves all its inherent rights.

The two most important classes of droits of this description are, (1) Captures effected by a conjoint force of the Army and Navy, as on the seizure of an enemy's colony or possession; and (2) Captures made before the commencement of hostilities.

The former of these are specially reserved to the Crown under the Prize Act and the Proclamation, and we shall have occasion hereafter to speak of them at some length; the latter will here require a few words of explanation.

In the long European wars at the end of the eighteenth and beginning of the nineteenth century, and probably also before that time, a practice prevailed to a very great extent of laying on an embargo or issuing orders for the detention of property belonging to the subjects of any State, whose friendly dispositions there was reason to doubt, or with whom our relations were of such a nature, as to lead to the probability of a war. An embargo was the prelude to almost all our wars at that period. If amicable relations were re-established, the embargo was raised, and the vessels and their cargoes were thereupon released; but if, on the other hand, hostilities ensued and war was declared, the prizes and their cargoes were proceeded against in the Court of Admiralty, and were condemned to the King *jure coronæ*.

Thus, on the 14th day of January 1801, an order of embargo was placed upon Russian, Danish, and Swedish property. War, however, did not ensue with those countries, and on the 4th of June following the order of embargo was revoked, and the property was restored. Again embargoes were laid on the 4th of February 1793 on French property, on the 16th of May 1803 on Dutch property, on the 5th of April 1806 on Prussian property, on the 2nd of September 1807 upon Danish property, on the 9th of December following upon Russian property, and on the 31st of July 1812 upon American property; and a very large number of vessels and cargoes were in consequence detained, more particularly under the Danish embargo.



Hostilities having subsequently broken out with all those countries, namely, with France, on the 11th of February 1793, with Holland on the 16th of June 1803, with Prussia on the 14th of May 1806, with Denmark on the 4th of November 1807, with Russia on the 18th of December of the same year, and with America on the 13th of October 1812, the whole of that property was condemned to the King as droits of the Crown, and upon being sold, realised a very considerable sum.

Now in all the above-mentioned wars the property thus seized under an embargo, or Order of Government issued prior to the breaking out of hostilities, was entrusted to Commissioners specially appointed by the Treasury for the purpose, whose duty it was to take care of it pending adjudication, and upon condemnation to see to its being sold to the best advantage, and to the proceeds being paid into the Admiralty Registry to the credit of the Crown.

From the preceding remarks it will be seen when it was that a prize became a droit, and when it enured to the benefit of the captors.

If on the breaking out of hostilities the usual Prize Proclamation had been issued by the Crown, duly commissioned captors, that is to say, ships belonging to the Royal Navy and privateers duly furnished with letters of marque, took the whole interest in any captures, which they might make at sea during the dependence of those hostilities. They retained the prizes in their own possession pending adjudication, and upon condemnation disposed of them as they or their agents deemed best. The Crown had no interest in them, save that upon grounds of public policy it reserved to itself the right of restoring any prize pending adjudication, if the interests of the public required it. After condemnation, however, the property vested absolutely in the captors.

In all other cases, however, prizes upon condemnation became droits. If the capture had been made before hostilities, if the usual Prize Proclamation had not been issued, if the prize had been taken in port or by a non-commissioned captor, or upon a conjoint expedition of land and sea forces, in fact wherever it did not come strictly within the terms of the Prize Proclamation, the prize was condemned either as a droit of Admiralty or as a droit of the Crown, and the captors could claim no interest therein. It remained pending adjudication in the hands either of the Marshal of the Court of Admiralty, or of Commissioners specially appointed for the purpose; and, when condemned, was sold by those officers, and the proceeds paid into the Admiralty Registry.

But, although the captors could claim no interest in those proceeds, the Crown in some cases made a grant to the captors, in other cases it gave nothing. What were the cases, in which the Crown usually made a grant to the captors out of the droits, when on the other hand it refused to do so; what were the

principles upon which it acted in either making or refusing a grant, and what proportion of the proceeds was usually awarded in cases where a grant was made, it will now be our object to ascertain.

Before, however, I proceed to that inquiry, it will be proper to state the steps, which captors adopted to obtain a grant from the Crown, the course which the Crown took to ascertain whether a grant ought or ought not to be made, and the mode in which the grant was usually made, if the captors were deemed to be entitled to reward.

#### SECTION 5: MODES OF MAKING A GRANT.

It would seem that there were two modes in which it was usual to reward captors out of the droits. The proceeds being in the Admiralty Registry, the Crown would occasionally refer the question of amount to the court. This was, however, not very frequently done, and, so far as I have been able to ascertain, only in the comparatively few cases of droits of Admiralty, arising out of captures by non-commissioned vessels or persons during hostilities. We shall have occasion to refer to some of these hereafter.

The usual mode, however, was by a Treasury Warrant directed to the registrar and deputy registrars of the Admiralty, ordering them to pay to the captors a certain proportion of the proceeds, or a certain sum of money for their services. This course was adopted not alone in respect of droits of Admiralty, but also in the far more numerous and more important cases of droits of the Crown. The mode in which these warrants were issued appears to have been as follows:—

After the prize had been condemned either as a droit of the Crown or as a droit of Admiralty, and the proceeds had been realised, a memorial was presented on behalf of the captors to the Lords Commissioners of the Treasury, setting forth all the circumstances of the case and praying their Lordships to recommend to His Majesty to award to them either the whole of the proceeds or such proportion thereof as their Lordships should think proper. Upon the receipt of this memorial by the Treasury it was forwarded to the King's Proctor, who laid it before the King's Advocate, and under his advice reported the proportion, which it would be proper under the circumstances to grant to the captors out of the proceeds. Upon the report being read at the Board, a minute was made either approving of the King's Advocate's recommendation, or laying down certain general directions for the guidance of the law officers in future cases. And, in the event of the case being considered one entitling the captors to a remuneration, a warrant was then prepared, addressed to the registrar and deputy registrars of the High Court of Admiralty, directing them to pay out of the proceeds remaining in their hands such proportion thereof as their Lordships saw fit to grant.

Warrants of this description, to the number of above 1,300, including some thousands of grants, and dating from the year 1780, have been found by me amongst the records of this office. Upon carefully examining these warrants I found that the grants were extremely varied, and that sometimes, though rarely, the whole of the proceeds were granted. At other times two-thirds, five-sixths, three-fourths, one-half, nine-tenths, four-fifths, one-eighth, one-fourth, one-fifth, one-third, two-fifths, and three-eighths, were granted, and in some cases two-thirds and nine-tenths of the remainder, one-half and nine-tenths of the remainder, and nine-tenths and nine-tenths of the remainder were granted.

It was, however, quite impossible to ascertain from the contents of warrants alone the principles upon which the usual grants had been made. They were, in fact, mere orders for the payment of a certain proportion, and contained few, if any, of the circumstances of the cases, sometimes not even the date of the capture, or the nation to which the captured property had belonged.

To ascertain these particulars it became necessary to examine the captors' memorials, the King's Proctor's reports, and the King's Advocate's opinions, together with their Lordships' minutes thereon. I accordingly looked up from amongst the Treasury records these various documents in a great number of cases, in fact in all the leading cases; and I have thus, as I believe, been enabled to discover the principles upon which these grants were made, and when and under what circumstances the proportions granted to captors were from time to time varied during the progress of our wars.

With a view to render the remarks which I shall have to make more readily intelligible, I have prepared from the several documents above mentioned a table or register\* of all the warrants now in my possession, commencing from the year 1780, arranged in the order of their respective dates, and showing the name and nature of the property condemned and its national character, the character and name of the capturing ship, the date of capture, whether before or after the issue of an embargo or during hostilities, whether the prize was condemned as a droit of the Crown or a droit of Admiralty, the amount of proceeds, and the proportion granted to the captors in each case. I have also added by way of observation such facts as, on a perusal of either the warrants, the memorials, the King's Proctor's reports on their Lordships' minutes, appeared to me to be important. And as the date of the capture, whether before or after embargo, whether made in pursuance of orders from the Government or not, has, as will hereafter be seen, a most important bearing on the proportion of the proceeds granted to the captors, there will be found at the commence-

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\* See Prefatory Note by Editor as to this compilation.



ment of the register a list of all the wars in which we have been engaged from the year 1778, and to which the register relates, with the dates at which embargoes, if any, were issued, and war declared on each occasion.

As I shall have frequent occasion in the course of my report to refer to this register, I have forwarded a copy of it herewith.

It is not pretended that this register contains all the grants which were made out of droits from the year 1780, the date of the earliest warrant, down to the present time. There may have been, and no doubt were, others. Some, probably, of the warrants have been lost or mislaid, as no great care seems to have been bestowed either upon their preservation or upon their arrangement. Some cases were also, as I have stated, referred by the Crown to the judge of the High Court of Admiralty for his decision; these would, of course, not be found in the register, as the captors would take, not under a warrant, but under the decree of the court. Making, however, every allowance for these omissions, it will, I think, be found that the register contains the great majority of grants made to captors, as well out of droits of Admiralty as out of droits of the Crown, during the period in question, and that it affords ample materials for determining the proportions usually granted to captors out of the droits in every description of case and at every period during those wars.

I propose then to divide the droits into three classes consisting of—

- (1) Prizes captured on the seizure of an enemy's fortress or possession.
- (2) Prizes captured at sea.
- (3) Prizes captured in port.

These are perhaps the most natural divisions, which could be made. In the first class, the service being one almost necessarily attended with danger, we shall find that the largest reward was always granted. In the second, there being rarely any danger (except, indeed, when an armed ship was captured, in which case the larger reward was given), but sometimes much skill required, a less reward was usually granted. And in the third class, there being no danger incurred, sometimes but little skill necessary, the smallest reward was ordinarily granted.

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## CHAPTER I.

DROITS SEIZED ON THE CAPTURE OF AN  
ENEMY'S FORTRESS OR POSSESSION.

First, then, as to droits seized on the capture of an enemy's fortress or possession.

A capture of this description might be made either by a naval force alone or by a conjunct expedition of land and sea forces. In the former case, inasmuch as such a capture could only take place during hostilities, no question was, I believe, ever raised as to the captors right thereto, and it was held to belong to them after condemnation, if the usual prize proclamation had issued, as fully as any other prizes, which they might make during hostilities.

When, however, the capture was effected by a conjunct expedition of land and sea forces, great doubts were entertained at the commencement of the period of which we are now speaking, as to the persons who were legally entitled to claim it. And it was only after very lengthened and expensive law proceedings that the matter was finally decided, and that prize taken on a conjunct expedition of land and sea forces was adjudged to be a droit of the Crown. The question arose during the war with Holland in 1780 and 1781.

Two Dutch East Indiamen—the “Hoogskarpel” and the “Pearl”—having been captured on the 21st of July 1781 in the Bay of Saldanha by a conjoint expedition of land and sea forces, which had been fitted out against the Dutch settlements in South Africa, a question arose as to the persons entitled thereto, there being no provision on the subject in the Prize Act of that day. It would seem from the warrant marked No. 9 in the accompanying register that the Judge of the High Court of Admiralty had on the 28th of May 1785 condemned the property to the captors and had directed it to be distributed in certain proportions between the Army and Navy. From this sentence an appeal was prosecuted on behalf of the Navy, who contested the right of the Army to share at all in the proceeds, and the Lords Commissioners of Appeals in Prize Causes on the 30th of June 1786 reversed the sentence of the Court below, and condemned the property as good and lawful prize to the Crown. Various proceedings were subsequently taken on behalf of the Navy to set aside this judgment, first by an application to the Crown for a commission of review, which was refused, and next by a prohibition obtained from the Court of Common Pleas. This prohibition was, however, set aside, first, by the Court of King's Bench, and afterwards, on the 22nd of June 1795, by the House of Lords, thus confirming the decision of the Lords of Appeal in Prize Causes, by whom the property had been

pronounced to be a *droit* of the Crown. All that the Crown, however, seems to have desired by these proceedings was, first, to assert its own right to the property, and next to protect the interests of the Army against the Navy. For by a warrant (No. 9) dated the 20th of May 1796 it granted the whole of the proceeds, amounting to no less a sum than 144,928*l.* 12*s.* 11*d.*, rateably between the Army and the Navy in proportion to the number of men of each service engaged in the expedition.

A similar question arose in regard to the booty captured on the seizure of the Dutch Settlement of Chinsurah in the year 1781 by H.M.S. "Nymph" jointly with some troops belonging to the East India Company. That booty was ultimately condemned as a *droit* of the Crown, but not without considerable opposition on the part of the Navy, who claimed the whole of it. After, however, the condemnation the Crown, by various warrants (Nos. 5 and 10), granted the whole of the proceeds to the captors.

The course which was taken in these cases of granting the whole of the proceeds to the captors seems to have been adopted in all future cases of a similar description. Nor is it more than might reasonably have been expected, for if commissioned captors are entitled to the whole proceeds for the capture at sea of an enemy's merchant vessels in time of war, a service hardly ever involving any risk and sometimes but little trouble, it seems hardly reasonable to suppose that a less proportion would be a proper reward for the capture of an enemy's fortress or possession, a service generally attended with some danger, sometimes even with a heavy loss of life.

With a view, however, to avoid for the future the unseemly contentions which had arisen between the Crown, the Army, and the Navy as to the right to captures of this description, a clause was introduced into the next Prize Proclamation, that of 1793, into the next Prize Act,\* and into all the subsequent Prize Acts and Proclamations, by which the Crown reserved to itself "the *division and distribution* of all prize and booty taken" in conjoint expeditions of the Army and Navy. Those clauses were in effect similar to the last Prize Act, Russia, 1854,† by which, whilst the right to any booty taken on the capture of an enemy's fortress or possession by the Navy alone was confirmed to the captors, the right to any such booty, if taken by a conjoint expedition of the Army and Navy, was reserved to the Crown.

Section 6 of this Prize Act provides that "the officers  
 " and crews of any of Her Majesty's ships or vessels of war  
 " who shall take any fortress or any arms, ammunition, stores  
 " of war, goods, merchandise or treasure belonging to the State  
 " or to any public trading company of any of Her Majesty's  
 " enemies upon the land, or any ship or vessel or goods or  
 " merchandise laden on board the same in any creek, river,

\* 33 Geo. III. cap. 66.

† 17 Vict. cap. 18, sects. 6 and 7.



“ haven, or road belonging to or defended by such fortress or  
 “ in any way whatsoever belonging to such enemies, shall have  
 “ the sole right and interest to and in the proceeds of all and  
 “ every such ship or vessel, arms, ammunition, stores of war,  
 “ goods, merchandise, and treasure after final adjudication  
 “ thereof as lawful prize to Her Majesty in the Court of  
 “ Admiralty.” Whereas by section 7 it is declared that, “ in  
 “ conjunct expeditions of the Navy and Army against any  
 “ fortress or possession of Her Majesty’s enemies,” they (that  
 “ is the Army and Navy) shall have only “ such proportional  
 “ right and interest ” in the property captured “ as Her Majesty  
 “ shall think fit to order and direct after final adjudication  
 “ thereof as lawful prize to Her Majesty ”; and there is a  
 proviso added that the Army shall not be “ entitled to share in  
 “ any prizes captured on the voyage to or from such fortress or  
 “ possession.”

Such or similar clauses are to be found for the first time in the Prize Act which was passed on the breaking out of the war with France in 1793,\* and they occur in every subsequent Prize Act to the present time. No such clauses are, however, found in the Prize Acts passed on the breaking out of hostilities with France in 1778,† with Spain in 1779,‡ or with Holland in 1780.§

I have said that the Crown by reserving its rights in regard to captures by conjoint forces of the Army and Navy sought rather to regulate “ the division and distribution ” of the proceeds than to diminish in any degree the reward to the captors. In the numerous expeditions afterwards undertaken against enemies’ possessions by conjoint forces of the Army and Navy, the booty captured was always condemned as a droit of the Crown and, so far as I am aware, there is no instance of the Crown having in any such case reserved for its own use any portion of the proceeds.

The following are instances, which the register affords, of the whole proceeds having been granted to the captors in cases of this description, after they had been condemned to the Crown as droits :—

Thus, on the capture of the Islands of St. Lucia and Tobago (Warrant No. 159) by the forces under the command of General Grinfield and Commodore Hood.

Of the Dutch colony of Surinam (Warrant No. 217) by Major-General Green and Commodore Hood.

Of Montevideo (Warrant No. 276) by Admiral Sterling and Brigadier-General Auchmuty.

Of the town of Diamante (Warrant No. 818) by the British sea and land forces assisted by a small flotilla of His Sicilian Majesty.

Of the Isle of Bourbon (Warrant No. 819) by the sea and land forces with the East India Company’s schooner “ Wasp.”

\* 33 Geo. III. cap. 66.

† 20 Geo. III. cap. 23.

‡ 19 Geo. III. cap. 67.

§ 21 Geo. III. cap. 5.

Of Alexandria (Warrant 840) by the forces under the command of Lieutenant-General Fox and Vice-Admiral Collingwood.

Of Cayenne (Warrants Nos. 1099 and 1105) by Captain Sir James Yeo, assisted by a Portuguese military force.

In the case of the Danish settlement of Heligoland (Warrant No. 1047), which was captured by a naval force before a formal declaration of war, the booty was, of course, condemned as a droit of the Crown. In that case also the whole of the proceeds were granted to the captors.

## CHAPTER II.

## DROITS CAPTURED AT SEA.

We now pass to the second division of this part of our subject, namely, to prizes captured at sea and which are condemned as droits.

Captures of this description might be made by—

- (1) a ship belonging to the Royal Navy ;
- (2) a privateer ;
- (3) a Revenue cruiser or Excise cutter ;
- (4) a non-commissioned vessel ;

and, as considerations of a somewhat different character apply to all these different classes of vessels, and as it is most important that there should be no uncertainty on this point, I propose, even at the risk of some repetition, to state clearly the position in which each description of vessel stood in regard to any captures which it might make at sea.

## SECTION 1 : BY SHIPS OF THE ROYAL NAVY.

King's ships or ships belonging to the Royal Navy, being specially the King's own force, had general commissions to cruise against all the King's enemies, they made captures during hostilities, and even before a formal declaration of war, when an embargo or any special order had been issued by the Government to that effect.

If war had been declared by this country and if the usual prize proclamation had been issued, they took, as we have seen, the whole benefit of any captures they might make at sea during the dependence of those hostilities.

But if the usual prize proclamation had not issued, then all captures made by them during those hostilities and all captures before a formal declaration of war were condemned as droits of the Crown, and the captors took only such proportion as the Crown might think proper to grant to them.

## SECTION 2 : BY PRIVATEERS.

But besides the regularly constituted naval forces of the country, private individuals were in the habit of fitting out and equipping private ships of war to cruise against the enemies of the State. I am speaking now of the end of the eighteenth and commencement of the nineteenth century. When war had been formally declared against any State, these persons applied for and received from the Government commissions or letters of marque authorising them to cruise against that particular State, and any captures which they might make during the dependence of hostilities from the subjects of that State belonged to them under the prize proclamation, to the same extent as to ships



of the Royal Navy. A failure, however, to issue the prize proclamation would affect them equally as it would ships of the Royal Navy.

The commissions or letters of marque, however, which they received, were not general as those to ships of the Royal Navy, authorising them to make captures from any State with which we might be at war, but they were special against the ships of some particular State. A privateer might have two or more commissions, authorising it to make captures from two or more different States; but the possession of a commission against any particular State would not authorise it to make captures from any other State with which we might indeed be at war, but against which it had no commission. Thus a privateer might be commissioned against France, or against France and Holland, but this would not entitle it to make captures from Spain, even though we might at the time be at war with Spain, until it had obtained a commission to cruise against that country. Thus, then, we see that in regard to any captures, which a privateer might make during hostilities from a State with which we might be at war, but against which it had no commission or letters of marque, it was in the position of a non-commissioned vessel; it could claim no interest in any of those captures; which would be all condemned as droits of Admiralty, as having been captured by a *non-commissioned* vessel during hostilities.

Likewise also, if the commission had been invalidated, which it might be, by any misconduct on the part of the privateer, as, for instance, by having a smaller number of hands than that prescribed by the letters of marque, by a change of the master, or by any other irregularity, the parties interested in the privateer forfeited all claim to any prizes which it might capture; they were condemned either as droits of Admiralty or as droits of the Crown, according to circumstances, and the captors in such cases depended entirely on the bounty of the Crown for any portion of the proceeds.

As to captures also before hostilities, privateers stood in a somewhat different position from ships of the Royal Navy. The latter, under their general commissions, were authorised to carry out the objects of an embargo, and even sometimes received special orders from the Government to detain the ships of the hostile State. It was, however, not the same with privateers<sup>4</sup>; they could not be authorised to cruise against that State, for the commissions to them could not be issued to them until after a formal declaration of war, and their commissions against other States could not, as we have seen, authorise them to make captures from this.

Nevertheless, no sooner was it known that an embargo had been issued against any State, or any orders issued for the detention of the vessels of that State, than the privateers, with as great, if not greater, alacrity than ships of the Royal Navy seized all the vessels belonging to that State, with which they might chance

to fall in, and carried them into British ports. If war ensued they were condemned, as we have stated, as droits of the Crown ; and the captors received a proportion, but, as we shall presently see, a somewhat smaller proportion of the proceeds than King's ships, possibly on the ground that they were not commissioned like the latter to carry the orders of the Government into effect.

### SECTION 3 : BY REVENUE CRUISERS AND EXCISE CUTTERS.

Revenue cruisers and Excise cutters were again in a somewhat different position. I am now speaking of them as they existed in former wars.

At that time Revenue cutters were purely Custom House vessels ; they had no commission from the Crown, but were entirely under the control and authority of the Commissioners of Customs. Their character in time of war is so clearly laid down by Lord Stowell in the case of the "*Helen*,"\* that I cannot do better than quote his own words. After referring to the clause in the Prize Act, by which the proceeds of any prizes "captured by any private ships or vessels of war, belonging to " His Majesty's Commissioners of Customs or Excise," should be placed at the disposal of the Crown—a provision, be it observed, which is to be found in the Prize Act of 1854, section 13—that learned Judge speaking in the year 1801, observes, "I remember perfectly well what was the reason for " the introduction of this clause. These vessels used occasionally " in former wars, to provide themselves with letters of marque " at their own expense. This was found in some degree " inconvenient to the proper service, in which they were " employed by Government ; instead of looking after petty " smugglers under their public commission, they were looking " after rich vessels of the enemy under their letters of marque, " which entitled them to the whole of the benefit of such prizes, " though they had been fitted out, manned and armed, not at " the expense of the owners, but at the expense of that " Government, which was thus to a certain degree defrauded of " their proper services. On the breaking out of the present " war " (the war with France of 1793) " it was deemed advisable " to annoy the enemy's commerce upon their own coasts, and to " intercept the return of their vessels into their own ports, and " it was thought that these vessels were eminently qualified for " this service from their intimate acquaintance with the coasts " of France and their experience in that navigation. The " Government therefore directed them to be provided with " letters of marque for the purpose of enabling them to act " hostilely in the service required ; but at the same time to " prevent their acting without control, and with injury to their " other public duty, reserved the distribution of all prizes taken " by these vessels to its own discretion. Besides these purposes

“ of public policy which this arrangement answered, it had the  
 “ additional advantage of providing a sort of general fund, out  
 “ of which Government might reward at its discretion such of  
 “ them as had cruised with merit but without success.”

Thus then, we perceive that Revenue cruisers and Excise cutters were a species of privateer. If duly commissioned against any particular State, they were entitled to make captures from the subjects of that State; and the whole proceeds of any such prizes captured during hostilities up to the war of 1793 belonged to them, and in and subsequent to that war was paid to a general fund for the benefit of this class of vessels.

Likewise, also, captures made by a Custom House vessel during hostilities from a State, with which we might indeed be at war, but against which it had no letters of marque, were condemned as droits of Admiralty, as having been captured by a non-commissioned vessel during hostilities. And captures made by them before hostilities were condemned as droits of the Crown. In both these cases, however, a proportion of the proceeds, equal, as we shall see, to that usually granted to privateers, was paid to them, or rather, I should say, to the general fund, of which mention has just been made.

What part of these proceeds went to the commander and crew of the vessel, which actually effected the capture, and what part was reserved for the fund, does not appear. The fund in question was naturally under the special management of the Board of Customs, and the documents, which would have furnished the information, have, as I presume, perished with the other papers when the Custom House was burnt down. It is, however, I think, not a matter of much importance, for the proceeds resulting from captures by Revenue cruisers during the late war with Russia are not so large as to render it either necessary or desirable that any such general fund should be formed thereout; and should the occasion for such a proceeding arise in any future war, the most equitable mode in my opinion of dealing with it would be by giving to the commanders and crews of the respective Revenue cruisers such proportion of the proceeds, as, in the case of a privateer, would ordinarily go to the master and crew thereof, and by reserving for the general fund such proportion only, as would ordinarily belong to the owners of the privateer.

#### SECTION 4: BY NON-COMMISSIONED VESSELS.

Lastly, captures were sometimes effected by purely non-commissioned vessels, vessels having no pretension to being considered ships of war, as by merchant ships, packet boats, and even pilot boats. Captures, however, of this description were comparatively few in number; there is hardly an instance of any capture of this kind having been made before a declaration of war. Ordinary merchant vessels either knew



nothing of the embargo, or if they did, were more anxious to get into a port of safety than to capture prizes. Occasionally, however, during hostilities, merchant vessels and other non-commissioned vessels captured enemies' ships; in such cases the prizes were necessarily condemned as droits of Admiralty, but a proportion was always granted to the captors.

We are now speaking, be it remembered, only of "captures at sea," and the cases, then, in which we shall have to ascertain what proportions of the proceeds were usually granted to the captors, are:—

First, where the capture was effected before hostilities, whether by a ship of the Royal Navy, privateer, Revenue cruiser or non-commissioned vessel.

Secondly, where it was made during hostilities by any of those vessels, and when the usual prize proclamation had not issued.

And thirdly, where it was made during hostilities by a privateer or Revenue cruiser not duly commissioned for the purpose, or by a purely non-commissioned captor.\*

In such cases, as we have seen, the captors could not claim the proceeds as of right, but must be content to take such proportion as the Sovereign might think fit to grant.

What was this proportion and how it varied in our successive wars down to 1815, I will now proceed to state.

*Subsection 1: Early Grants out of the Droits for Captures at Sea made during Hostilities by Vessels not duly Commissioned.*

It would be vain to seek amongst the earlier grants, which the accompanying register contains, for any great uniformity in the grants in cases of this description. The cases were then too few to render it either necessary or desirable to lay down any fixed rules as to the proportions to be granted to the captors—thus there were but two grants (Nos. 3 and 4) arising out of the war with France in 1778, two (Nos. 1 and 2) out of the war with Spain in 1779, three (Nos. 8, 9, and 10) out of the war with Holland in 1780, very few out of the war with France in 1793, and still fewer out of that with Holland in 1795. Still, however, it will be neither unimportant nor uninteresting to examine these earlier grants and observe how at first, when the grants were few, an attempt seems to have been made to vary the proportion allotted to the captors according to the merits or supposed merits of each particular case; and how, when the grants afterwards became more numerous a more uniform system was adopted and a fixed proportion of the proceeds came to be granted without reference to the special merits of each particular case.

\* See The Dickenson, Hay, and Marriott Decisions, vol. 1, p. 1. The crew seized the ship, which belonged to American rebels, and brought her into port.

The earliest warrant (No. 1) of which I have any record, bears date the 3rd of May 1780, and relates to the capture, on the 1st of July 1779 and during hostilities, of a Spanish vessel called the "*Nuestra Señora del Merced*" by the privateer "*Lyon*." The privateer was, it appears, provided with letters of marque against France and America, two of the nations with whom we were then at war, but as war had only very shortly before the capture (namely, on the 18th of June preceding) been declared against Spain, she had not had time to provide herself with letters of marque against that Power; and she was consequently non-commissioned as regards any captures which she might make of Spanish property. The prize was accordingly condemned as a *droit* of Admiralty; and, upon an application having been subsequently made by the captors for a grant, the Crown gave them the whole of the proceeds. It should, however, be added that the privateer had previously, but at what time does not appear, engaged and disabled a French frigate of 64 guns, and that her owners had been put to great expense in refitting her after the engagement.

This case, however, belonged to a class, in which the Crown was at that early period extremely liberal, reserving but a very small portion, if indeed any, of the proceeds to itself. I mean cases, in which the prize would ordinarily have enured to the benefit of the captors, but where, from some cause other than the misconduct of the captors, it had been condemned to the Sovereign, either as a *droit* of Admiralty or a *droit* of the Crown.

Thus in the case of certain French ships (Warrants Nos. 3 and 4) captured from 1778 to 1781 by the British squadron under the command of Sir Edward Vernon in company with six East India ships, it would seem that the shares of the latter had been condemned as *droits* of Admiralty in consequence of their having from some accidental circumstance been without letters of marque, but, as it had always been usual for vessels belonging to the East India Company's service to be furnished with letters of marque, the Crown granted the whole value of the shares, which had been thus forfeited, to the six East India ships, as though they had been commissioned vessels.

Again in the case of the French ship "*Le Franc*" (Warrant No. 11) captured on the 24th of June 1793 by seven ships belonging to the East India Company, of which six only had letters of marque, and one the "*Glatton*" was without them, the Crown gave to the "*Glatton*" the whole share, to which she would have been entitled as a commissioned ship, but which in consequence of her not having had letters of marque had been condemned as a *droit* of Admiralty.

Again, in the case of the "*Speculation*" (Warrant No. 19) captured by H.M. sloop "*Fairy*" on the 16th of November 1796, and which had been condemned to the Crown by the judge of the Court of Admiralty in consequence of the captor

" having promised the witnesses that they should not lose their wages by speaking the truth," the warrant states " that although the promise held out by the said Thomas Baker " (the captor) " to the crew of the captured ship is not free from impropriety, yet, as it does not appear to have been prompted by any evil intention, it ought not to deprive him of that benefit in the prize, which, without the intervention of such a circumstance he would have been legally entitled to," and accordingly the Crown granted him the whole of the proceeds in question.

Thus, again, on the 16th February 1801, the Crown granted the whole proceeds of the Dutch cargo of a vessel called the " Robert " (Warrant No. 41), which had been condemned as a droit of Admiralty to the Revenue cutter " Alarm." The " Alarm " was indeed provided with letters of marque against Holland, but, in consequence of her master having been ill on shore at the time of capture, they had become forfeited.

Also in the case of the French vessel, " Ceres " (Warrant No. 43), captured on the 28th of July 1799, during hostilities by five privateers, four of whom had letters of marque against France, but the fifth, the " Diana," was commissioned against Spain but not against France, and her share was consequently condemned as a droit of Admiralty. But the Crown, on the 28th of July 1801, granted five-sixths of that share to the " Diana."

Again, in the case of the cargo of the " San Josef " (Warrant No. 52), captured on the 10th of March 1797 during hostilities by the privateer, " Rowboat," but condemned as a droit of Admiralty in consequence, as the warrant states, of the owner of the privateer having neglected to apply for fresh letters of marque when the vessel for which they had been issued became disabled, and having transferred them to a new vessel of the same name as that which actually effected the capture. In this case, the Crown, on the 26th of November 1802, granted nine-tenths of the proceeds to the captors.

In all the preceding cases the captures had taken place during hostilities, and had been made by privateers or vessels of that character; and we have seen that the grants were upon the most liberal scale. It was probably thought that the fact that they would, under the usual prize proclamation, have been entitled to the whole benefit of those captures, had they not, from some fortuitous circumstance, lost the benefit of their letters of marque, entitled them to some indulgence at the hands of the Crown.

#### *Subsection 2: Early Grants out of Droits for Captures at Sea made before Hostilities.*

Let us now see what course was adopted at this early period in regard to captures at sea before hostilities. It is rather a remarkable circumstance that in the first four wars of the period



of which I am speaking, namely, that with France in 1778, that with Spain in 1779, that with Holland in 1780, and that with France in 1793, no captures of this description were made, although a considerable period elapsed in each case between the issue of the embargo and the actual declaration of war. There may indeed have been seizures in port under the embargoes by the Marshal of the Admiralty or other civil officer of the Crown, for which those seizors would not, as will presently be seen, have been entitled to any reward. But there do not appear to have been any captures made at sea in pursuance of the orders of embargo, a class of cases which in our subsequent wars became so numerous, and which form the bulk of the cases in the accompanying register. At any rate, no grants would seem to have been made to the captors on account of any such captures.

The first case of the kind which I have arose out of the capture of a Dutch cargo (Warrant No. 13) by a privateer called the "Manchester" previous to the breaking out of the war with Holland in September 1795. It would seem that the master of the privateer, anticipating hostilities with Holland, in July 1795 captured, though not without resistance, the American ship "Hannibal" on the ground of her having a Dutch cargo *on board* and carried her in for adjudication. On war being subsequently declared against Holland the cargo of the "Hannibal" was condemned as a *droit* of the Crown, and upon the captors then applying for a grant of the whole proceeds to be made to them, the King's Proctor in his report of the 25th of February 1797 (Treasury No. 673) observed that the King's Advocate was of opinion that "such prayer of the memorialists for the whole proceeds is not proper to be complied with under all the circumstances of the case and attending to what has been done in other instances of a similar nature; and it is humbly submitted that a grant of a moiety of the net proceeds of whatever may be ultimately condemned, after deducting such expenses as may have been incurred on behalf of the Crown, would be a proper and highly liberal compensation to the memorialists."

On what ground it was that a moiety only was in this case considered "a proper and highly liberal compensation" does not appear from the report. The memorialists, however, seem to have considered it an unusually small grant, for in the following month they forwarded to the Treasury two applications (Treasury No. 1112) for a further grant on the ground that it was usual in such cases to give the captors the whole proceeds. And I find, indeed, that the application was renewed even so late as the year 1809 (Treasury No. 4380). To all these several applications, however, the same reply was returned, namely, that the case had been fully considered on the first memorial and that there were no grounds for making a further grant.

Whether it was the fact, as stated by the memorialists, that it had previously been usual in such cases to grant the whole of the proceeds, I have no means of knowing, as it is the earliest grant of the kind which I have. Nor, indeed, is it a matter of much importance, as whatever may have been the practice in those early times, certain it is that the whole of the proceeds were never afterwards given, except in very peculiar cases, to which reference will hereafter be made.

The next case is that of the "True Charlotta" (Warrant No. 16). This was a Dutch vessel captured by His Majesty's ship "Melpomene" in July 1796 during the war with Holland. The ship and part of the cargo were condemned to the captors as Dutch property, but another portion of the cargo was pronounced to be Spanish property. Pending the adjudication of the property, however, and whilst it was still in this country, war was declared against Spain, and accordingly the Spanish part of the cargo was condemned to the Crown as captured before hostilities, and upon an application from the captors one moiety of the proceeds was given to them probably on the ground that the greater part of the property had been already condemned to them, as expressed in a subsequent grant to which reference will hereafter be made.

The next case is that of the "Prosperidad" (Warrant No. 17), a Spanish vessel captured on the 7th of November 1796 by some of His Majesty's vessels of war. It would seem that this vessel was captured subsequently to the commencement and actual declaration of hostilities by Spain against this country, subsequently also to the capture of a Spanish frigate, the "Mahonesa," after an action with H.M.S. "Terpsichore," and only two days before the declaration of hostilities by Great Britain against Spain. Under the circumstances, it was thought that the captors should be placed in the same position, as if the two countries had been actually at war when the capture was effected, and the whole proceeds were accordingly granted to them.

The next case in which a grant was made out of droits of the Crown for a capture before hostilities (Warrant No. 20), was one of very great merit on the part of the captors. A small cutter, the "Lady Jane," mounting six guns and with a crew of 23 or 24 hands on the 27th of September 1796, fell in with two Spanish vessels, the "Nostra Señora Francisca Xavier" and the "Nostra Señora de la Misericordia," of 140 and 188 tons and carrying crews of 13 and 14 hands respectively, and an embargo having on the 21st of the same month been issued against Spanish property, the "Lady Jane" compelled both vessels to follow her towards the English coast, where she took possession of them, H.M.S. "Minerva" being, however, in sight at the time and being consequently entitled to share as a joint captor.

The property was on the breaking out of hostilities with Spain condemned as droits of the Crown, and, upon an application being made by the captors for a grant, the King's Proctor in his report of the 4th of October 1798 (Treasury No. 3312) observed that the "Lady Jane" had such "particular merit in the transaction as to entitle her to a greater proportion of whatever may be granted by His Majesty, than she would take under the Royal Proclamation for the distribution of prizes according to the number of her crew compared with the crew of the 'Minerva'," and he therefore recommends a grant of three-fourths of the proceeds, of which one-third should be given to the "Lady Jane" and two-thirds to the "Minerva." And accordingly a grant to that effect was made to the captors.

The next two cases, those of "La Princesa" and "La Reine Louisa," (Warrant No. 21) are important as being the first instance of a grant of two-thirds of the proceeds, a proportion which, as will presently be seen, soon afterwards became the general rule. The prizes in these cases were two Spanish vessels that had been captured on the 17th of September 1796 by H.M.S. "Seahorse" before the issue of an embargo against Spanish vessels, but no doubt in pursuance of orders from H.M.'s Government to that effect. The King's Proctor's report on these two cases cannot, unfortunately, be found, but the warrant states "that considering the date of the captures" (as contradistinguished, I presume, from that of the "Prosperidad" (Warrant No. 17) in which the capture took place on the 7th of November subsequent to the declaration and actual commencement of hostilities by Spain against this country, and in which case the whole proceeds were granted), "their value" (which was no less than 65,942*l.* 2*s.* 2*d.*), "and other circumstances attending these cases, a grant of two-thirds of the proceeds would be a proper remuneration to the captors." And accordingly a grant to that extent was made.

In the next case, the "Aquilla," (Warrant No. 22) a Spanish vessel captured on the 27th of September 1796 under the order of embargo, a similar grant of two-thirds of the proceeds was made.

In the next case—that of "El Gertrude" (Warrant No. 24), also a Spanish vessel, captured by H.M.'s cutter "Telemachus" on the 6th of October 1796—the proportion was again varied. This was, however, a very special and exceptional case. The prize had the appearance of being a ship-of-war of 26 guns, but the cutter, which carried only 14 guns, nevertheless attacked and captured her. Meeting afterwards with a Spanish frigate and two xebecs, they boldly pursued their course, the prize taking the lead, the cutter following her, as though they were two British ships-of-war. The Spanish vessels kept away, and the cutter and her prize ultimately arrived in safety at Gibraltar. Proceedings having been commenced in the Vice-



Admiralty Court there established, the prize was, in the first place, erroneously condemned by that Court to the captors; but upon its being subsequently ascertained that she ought to have been condemned to the Crown as enemies' property captured before a declaration of war, the captors voluntarily gave up the whole of the proceeds. A memorial was presented by the captors for a grant out of the proceeds, and the King's Proctor, in his report of the 22nd. of April 1799 (Treasury No. 1362), observes that he laid the memorial "before Sir William Scott (His Majesty's late Advocate General) and consulted him, and, after a minute consideration of the peculiar circumstances of the case," he reports that it appears to be a capture "attended with circumstances highly meritorious, and being effected on or about the day on which hostilities were declared by the King of Spain against His Britannic Majesty, and after several acts of hostility committed by that country on the subjects of this, seems to give the memorialist a strong title to the bounty of his Sovereign. But that, as it is of importance that His Majesty's original and absolute right in prize of war, till granted by His Proclamation, should be constantly preserved and held out to notice by an assertion of it for His Majesty's interest in some proportion according to the nature and value of the capture, I do, under the late Advocate General's advice as aforesaid, most humbly submit that a grant of five-sixths of the said sum of 15,280*l.* 14*s.* 3*d.* to the memorialist, his officers and crew does not appear to be an improper compensation to the captors under the peculiar circumstances of the case." And accordingly a grant to that extent was made.

In the few cases of captures before hostilities which had occurred up to this time, that is to say, up to about the middle of the year 1799, an attempt seems to have been made to vary the proportion granted to the captors according to the peculiar merits of each case. Hence we find grants made to them sometimes of one-half, sometimes of five-sixths, sometimes of the whole, sometimes of two-thirds, and sometimes of three-fourths of the proceeds according to the circumstances of each particular case.

### *Subsection 3: Spanish War of 1796.*

When, however, the applications arising out of the numerous captures made before the declaration of war against Spain in 1796\* began to come in, the difficulty of adjusting the proportion to be granted to the merits of each case, so that too much should not be given in one and too little in another case, became at once apparent; and it was, therefore, determined to fix some definite proportion to be granted in every case, except

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\* War was declared in October.

when special circumstances seemed to justify a departure from it. The proportion which was thus fixed upon as applicable to all ordinary cases was two-thirds of the proceeds, and we shall find that from this time, that is, from the middle of 1799 down to the end of the year 1804, that was the proportion granted in all cases of capture before hostilities, except, indeed, in two or three instances where the proceeds were very small in proportion to the number of persons entitled to share, and in which case the whole proceeds were granted.

Thus we find that, on the 27th of July 1799, two-thirds of the Spanish vessel "San Felix" (Warrant No. 25), captured by H.M.S. "Magicienne" on the 6th of September 1796 were granted to the captors.

On the 14th of December 1799 two-thirds of the Spanish vessel "San Juan de Dios," *alias* "La Bascongado" (Warrant No. 28), captured also by the "Magicienne" on the 9th of August 1796, was also granted to the captors.

Again, in the year 1800, two-thirds of the Spanish property in the cases of the "Nossa Senhora," "Concordia," "Robespierre," and "San Antonio," *alias* "El Triomphante" (Warrant Nos. 31, 32, 33, and 35), all of which had been captured prior to hostilities with Spain in 1796, were granted to the captors.

On the 11th of May 1802 the same proportion of the proceeds of the "San Josef y Animas" and of the "San Roque" (Warrant No. 48) Spanish vessels captured in October 1796 by H.M.S. "La Suffisante" were granted to the captors; and the King's Proctor, in his report on these cases bearing date the 6th of January 1802 (Treasury, No. 89), observes that as they do not appear to have been "attended with circumstances materially distinguishable from other captures at sea" of Spanish property before the declaration of hostilities, a "grant of two-thirds of the net proceeds will be a proper reward to the captors." Thus, two-thirds was at this time recognised as the proportion proper to be granted to captors in cases of this description.

The last case of a grant for a capture, made prior to the declaration of war against Spain in 1796, is that of the "Nostra Signora de Begona" (Warrant No. 79), in which likewise two-thirds of the proceeds were granted to H.M.'s sloop "Helena," by whom the prize had been captured.

The same proportion, too, was observed in the grants made out of Genoese property captured prior to the declaration of hostilities against that country in 1798. Thus we find two-thirds of the proceeds of the Genoese portions of the cargoes of the following vessels granted to the captors by warrants at the undermentioned dates:—

On the 27th March 1800, in the case of the "Concordia" (Warrant No. 32), captured by H.M.S. "Spitfire" in 1796.

On the 14th of May 1802, in the case of the "San Nicholas" (Warrant No. 49), captured by H.M.S. "Phæton" on the 5th of March 1797.

On the 8th of September 1802, in the case of the "Janus" (Warrant No. 51), captured in May 1798.

On the 2nd of December 1803, in the case of the "Amphion" (Warrant No. 62), captured by the "Phæton" on the 4th of July 1797.

The only exceptions during this period to the granting two-thirds of the proceeds in respect of captures made at sea before a declaration of war are three, and in each case the the proceeds were small in comparison to the number of persons entitled to share.

The first is that of "El Paquet de Bilbao" and seven other Spanish vessels (Warrant No. 27), captured in October 1796 by the squadron under the command of Sir Edward Pellew,\* the whole proceeds of which eight prizes amounted only to the sum of 4,052*l.* 1*s.* 9½*d.*

The King's Proctor in his report on these cases dated the 17th October 1798 (Treasury No. 3494) observes "that considering the small amount of the proceeds and the number of the ships concerned in the capture, and also attending at the time of capture, and the orders of the Board of Admiralty, under which Sir E. Pellew acted, a grant of the whole might not be improper."

Again, on the 18th of September 1801, a grant of the whole proceeds was made in the case of the "Christian Haab" (Warrant No. 44) captured by H.M.S. "Chichester" prior to the breaking out of hostilities with Genoa; the King's warrant stating "that the Commissioners have recommended under the circumstances aforesaid and as the proceeds are not very considerable in amount, and likewise that the number of persons to share is large, to grant to the captors the whole of the property condemned."

And, again, very shortly afterwards on the 2nd of October 1801 the whole of the proceeds of the cargo of the Dutch vessel "Constantia" (Warrant No. 45) captured in 1794 by H.M.S. "Ferret" prior to the breaking out of hostilities with Holland, and which were also not considerable were granted to the captors.

We have now examined in detail all the cases on the register, wherein grants were made out of the droits on account of captures at sea before hostilities arising out of the wars which preceded the peace of 1802; and we have seen that, although there was at first some irregularity in the grants, yet that from about the end of the last century a uniform practice began to prevail of granting two-thirds of the proceeds in all cases in which the proceeds had been condemned to the Crown, whether as a droit of Admiralty or a droit of the Crown, whether the

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\* Admiral Sir Edward Pellew, afterwards Viscount Exmouth (1757-1833).

capture had occurred before or after hostilities, and whether by a King's ship, privateer, Revenue cruiser, or non-commissioned vessel, all seemed to take the same proportion wherever the proceeds had been condemned as droits, if the capture had taken place at sea, and the prize was an unarmed vessel. We shall hereafter have to speak of the capture of armed vessels.

How it was that two-thirds of the proceeds came to be regarded as the proper proportion in these cases, I am quite unable to say. It may possibly have been thought that the capture of an enemy's merchant vessel on the high seas, being a service of less risk and difficulty than the capture of an enemy's fortress or possession, in respect of which the whole proceeds were given, or of an enemy's armed ship, in which the same amount was granted, and of greater difficulty than a capture in port, in which case, as we shall hereafter see, only one moiety of the proceeds was granted to King's ships—it may, I say, have been thought that a proportion intermediate between the whole and a moiety would be the proper remuneration. However this may be, certain it is that, prior to the peace of 1802 two-thirds of the proceeds was considered to be the proportion proper to be granted to the captors for prizes taken at sea, and which had been condemned as droits, whether the captors were King's ships, privateers, Revenue cruisers, or non-commissioned vessels.

The practice which had thus been adopted in regard to captures at sea made prior to hostilities of granting two-thirds of the proceeds to the captors was at about the same time extended to captures made during hostilities by privateers, whose letters of marque had from some cause or other become invalid, and in which cases we have seen that a very large proportion of the proceeds, not infrequently the whole, was at first given.

The most remarkable case of this description is that of the "Twee Gebroeders" (Warrant No. 59), a Dutch vessel, which had been captured on the 21st of March 1797 by the same privateer "Rowboat," and under the very same circumstances as the "San Josef" previously mentioned, and which had been condemned for the very same reason as a droit of Admiralty. The King's Proctor, in his report on the case dated the 5th July 1803 (Treasury No. 3088), recommends, as the transfer appeared to have been made "without any intention to infringe the law, that a grant of two-thirds should under the circumstances be made to the captors," and which was accordingly done. Whereas in the case of the "San Josef" nine-tenths of the proceeds had been given to the captors.

The rule of granting two-thirds of the proceeds, was also at about the same time adopted in regard to captures effected during hostilities by vessels altogether non-commissioned, not privateers which had been unable to take out letters of marque



before the capture, or whose letters of marque had been forfeited from some cause, other than the misconduct of the parties, but by private vessels having no pretensions whatever to be regarded as armed ships. Thus we find that two-thirds of the proceeds were granted to the captors in the following cases:—

On the 31st of August 1799, in the case of the Spanish vessel “El Conde de Galbez” (Warrant No. 26), captured on the 30th of November 1796 during hostilities by the non-commissioned vessels “Esther” and “Winchester.”

On the 15th of May 1800, in the case of the French vessel “Diligence” (Warrant No. 34), captured in 1796 during hostilities by the non-commissioned schooner “Nancy.”

And on the 8th of September 1802, in the case of the Dutch ship “Graff Bernstorff” (Warrant No. 50), captured on the 7th of August 1795, also after a declaration of war by some Scilly pilots in their boat. And in the last case the King’s Proctor, in his report dated the 12th of June 1802 (Treasury No. 2487), observed “that in conformity to what has been done in similar cases a grant of two-thirds of the net proceeds, after deducting all expenses, will be a fit reward to be given to the non-commissioned captors in this case.”

#### *Subsection 4: The War of 1803 with France and Holland.*

The peace of Amiens did not last long, and the Crown was soon again called upon to exercise its bounty in grants of this description.

On the 16th day of May 1803, war was declared against France, and on the same day an embargo was laid upon French property. On the same day also an embargo was issued against the Dutch, but it was not until the 16th of June following that war was formerly declared against Holland.

The result of these measures was, so far as regarded France, there having been no orders issued by the Government for the detention of French property previous to the actual declaration of war, that there would be no captures *before* hostilities, all the captures were necessarily made during hostilities. And, as the usual prize proclamation had been issued, all captures at sea, when made by commissioned vessels, belonged wholly to the captors; it was only when they were made by non-commissioned vessels that they became *droits*. These, then, are the only cases of *droits* with which we have here to deal; and they are, as might be expected, very few. There may, indeed, have been and probably were many French vessels seized on the breaking out of the war in port, which would be condemned as *droits* to the Crown, but these were not *captures at sea*, of which alone we are now speaking; we shall speak of captures in port hereafter. The effect, then, of the embargo and declaration of war against France having been issued on the same day was that of the *captures made at sea* none were condemned as *droits* of the

Crown, and only the comparatively few captured by non-commissioned vessels were condemned as droits of Admiralty.

It was, however, otherwise with regard to the Dutch captures, as a full month was allowed to elapse between the issue of the embargo and the declaration of war. During this period a large amount of property was captured at sea as well by King's ships as by privateers, which had obtained letters of marque against France. All this, upon war breaking out, was condemned as droits of the Crown. And there were, of course, as in the French war, the usual droits of Admiralty arising from captures *during* hostilities by vessels not duly commissioned.

It was probably in consequence of the number and importance of the captures now made, particularly under the embargo against Holland, that the Crown began to look more narrowly to its own interests. For we find that a question was at this time raised as to the right to captures effected by tenders to King's ships during hostilities, and which it appears had hitherto been condemned as of course to the captors. The question arose in the famous case of the "*Melomane*,"\* the circumstances of which were as follows:—

*Subsection 5: Seizure by Tenders to Ships of the Royal Navy.*

At the breaking out of the war in 1803, the commanders of some of His Majesty's ships hired or purchased small cutters and, having manned and equipped them from their own ships, sent them to sea with the double object of impressing men for the Navy and of capturing any of the enemy's ships, which they might fall in with. The result was that various captures were effected by these cutters soon after the breaking out of the war with France. Thus, the French vessel "*La Melomane*"\* (Warrant No. 69) was captured in June 1803 by the cutter "*Assistance*," which had been manned and equipped from H.M.S. "*Dragon*"; "*La Bonne Societ *" (Warrant No. 70) was captured by the cutter "*Stag*," hired tender to H.M.S. "*Prince*"; and "*L'Alexandre*" and "*La Jeune Melanie*" (Warrant No. 71) were captured by the cutter "*Johanna*," armed and equipped from H.M.S. "*Impetueux*."

On these prizes being brought into port, a question arose as to whether they belonged to the captors or to the ships from which the respective cutters had been equipped, or whether the prizes were not to be regarded as having been captured by non-commissioned vessels, and, as such, liable to condemnation as droits of Admiralty. The Crown, which as I have observed, had then begun to look more narrowly after its interests in these matters, asserted, as Lord High Admiral, its claim to these captures, as having been taken by non-commissioned vessels,

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\* 5 C. Rob. 41, 1 E.P.C. 419.

and the result was that the question came before the High Court of Admiralty, when Lord Stowell delivered a very important judgment,\* in which he pronounced the capturing vessels to have been non-commissioned, and consequently condemned the prizes as droits of Admiralty.

Memorials were subsequently presented by the captors to the Crown praying for a grant out of the proceeds; the captors alleging therein that "in the course of the war, in which His Majesty was engaged with the United States of America, it was a very common practice among the commanders of His Majesty's ships of war to fit out vessels or tenders at their own expense, and send them to sea under the command of commissioned officers; to cruise against His Majesty's enemies, by which means the trade of His Majesty's subjects was considerably protected, and that of His Majesty's enemies essentially annoyed, and that the captures made by such tenders, many of which were of considerable value, were regularly condemned as good and lawful prize to the commanders, officers, and crews of those of His Majesty's ships to whom the tenders making such captures belonged."

The King's Proctor's report on the case of the "Bonne Société" (one of these applications) enters so fully into the subject and contains so many important considerations in regard to captures of this nature, that I am induced to quote it at some length. The report bears date the 17th April 1804, and is marked No. 1839 in the Treasury Records. Having stated that he had laid the memorial before His Majesty's Advocate General, and consulted with him on the subject, he proceeds thus: "I do under his advice most humbly report to your Lordships, that it having been decided that vessels of the description of that which made the capture in question, are to be considered as non-commissioned, and no circumstances of extraordinary merit having attended the capture itself, a grant of two-thirds of the proceeds is the reward usually given under similar circumstances. But as the character of the capturing vessel is peculiar, and as several captures have been made by vessels of the same description, viz., small vessels hired or purchased by commanders or officers of ships of war, and manned and victualled out of His Majesty's ships, and sent to sea at the breaking out of hostilities to impress men, and to make captures, it is most humbly conceived to be necessary in this first case, to entreat the attention of your Lordships and of His Majesty's Government to the subject, and to submit whether such a practice is to be encouraged or is to be discountenanced, and also how the reward is to be distributed.

"Without offering any opinion upon the subject, it seems proper to submit on the one hand that many captures of

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\* The "Melomane," 5 C. Rob. 41, 1 E.P.C. 419.

“ enemies’ property are made by these vessels which might  
 “ otherwise have escaped, and that public service is thereby  
 “ rendered, which deserves encouragement. On the other hand,  
 “ it appears probable that vessels thus sent out would, if  
 “ encouraged, be employed in pursuing and bringing in prizes,  
 “ instead of boarding British ships to collect seamen for  
 “ manning the Navy, or that the officers and men might be  
 “ cruising at sea for their own advantage, instead of being  
 “ employed in port in expediting the fitting out of their own  
 “ ships. Another material consideration (and which should  
 “ receive the directions of Government) is the mode of dis-  
 “ tributing the reward; whether it should be given exclusively  
 “ to the persons actually on board these tenders (as they are  
 “ sometimes called) who are alone personally exposed to the  
 “ risk and peril of the cruise and capture, or whether the  
 “ captain and others who fit them out should also share, or  
 “ whether the reward should accrue to the captain, officers, and  
 “ all the crew of that ship, a portion of whose officers and men  
 “ and stores are put on board these vessels. Those remaining  
 “ behind have a heavier duty to perform, and an unfair and  
 “ dissatisfactory preference might be given in the selection of  
 “ the persons to be employed on such service. Many other  
 “ considerations on the different views of both points might  
 “ be stated, but which will readily present themselves when  
 “ the subject comes to be decided upon, but it is further  
 “ submitted whether the matter should not be called to the  
 “ attention of the Admiralty in particular, as immediately  
 “ connected with that department whose opinion upon it would,  
 “ of course, have great weight with your Lordships and His  
 “ Majesty’s General Government.”

Upon this report having been laid before the Treasury, the  
 following minute was made (Treasury Minute Book, vol. 82,  
 page 491):—“20th April 1804. Read report of the King’s  
 “ Proctor, dated the 17th instant, on a memorial from Richard  
 “ Grindall of His Majesty’s ship ‘Prince,’ praying a grant of  
 “ the proceeds of the French ship ‘Bonne Societé,’ wherein it  
 “ is suggested to lay the papers before the Lords of the Ad-  
 “ miralty previous to any determination thereon.” “Transmit  
 “ the papers to Mr. Marsden, and desire he will lay the same  
 “ before the Lords of the Admiralty, and request their Lordships  
 “ will favour my Lords with their opinion thereon.” A further  
 minute on the same subject will be found in the Treasury  
 Minute Book, vol. 83, page 212, and is as follows:—“10th July  
 “ 1804. Read letter from Mr. Marsden, dated the 4th instant,  
 “ in answer to a letter from this Board respecting the proceeds  
 “ of the French ship ‘La Melomane,’ captured by the tender  
 “ belonging to H.M. ship ‘Dragon,’ commanded by Admiral  
 “ Aylmer, that the Lords of the Admiralty are of opinion that  
 “ a grant of two-thirds of the net proceeds, after deducting  
 “ all expenses on the part of the Crown, is the reward proper



“ to be given to the captors, and that it should belong to the  
 “ captains, officers, and all the crew of those ships to which  
 “ the tenders belong. My Lords resume the consideration of  
 “ the report of the King’s Proctor, dated 17th May last on the  
 “ above subject, and also the report of the King’s Proctor,  
 “ dated 17th April last, on a memorial of Captain Grindall,  
 “ of H.M. ship ‘Prince,’ praying a reward for the capture of  
 “ the ship ‘Bonne Societé.’ Read also the report of the  
 “ King’s Proctor, dated the 17th April last, on the memorial  
 “ of Captain T. B. Martin, of H.M. ship ‘Impetueux,’ praying  
 “ a reward for the capture of the ships ‘L’Alexandre’ and  
 “ ‘La Jeune Melanie.’ Prepare a warrant for a grant of  
 “ two-thirds of the proceeds in each of the above cases in  
 “ the manner suggested in Mr. Marsden’s letter.” Accordingly  
 the warrants Nos. 69, 70, and 71 were, on the 9th day of  
 August 1804, issued granting two-thirds of the proceeds to the  
 ships to which the captors respectively belonged.

These grants were amongst the earliest which were made out  
 of the droits arising from the wars of 1803; and in granting  
 two-thirds of the proceeds, the Crown adopted the same rule in  
 regard to the droits which we have shown to have prevailed  
 towards the close of the previous wars, and particularly under  
 the Spanish war, 1796.

In three other of the earlier cases under these wars the same  
 proportion, namely, two-thirds, was likewise granted to the  
 captors.

The first of these cases is that of the French vessel “La  
 Marie Helene” (Warrant No. 66), which had been captured on  
 the 13th of October 1803 by a boat belonging to the privateer  
 “General Small,” the privateer herself having been obliged to  
 put into Guernsey to refit. The prize was in consequence  
 condemned as a droit of Admiralty, the capture having been  
 effected by a non-commissioned captor, but the Crown granted  
 two-thirds of the proceeds to the captors. The King’s Proctor,  
 in his report on the case, dated the 21st of April 1804 (Treasury  
 No. 1914) observed that “a grant of two-thirds of the property  
 “ captured will (according to what has been done in similar  
 “ cases) be a fit reward to the non-commissioned captors.”

Again, in the case of “Le Cerf” (Warrant No. 73), captured  
 on the 4th of June 1803 by the Revenue cutter “Active,” and  
 which had been condemned as a droit of Admiralty in conse-  
 quence of the captor not having been furnished with letters of  
 marque, the issue of which, it would seem, had been delayed  
 by some doubts entertained on the subject by their Lordships.  
 In this case we find the King’s Proctor, in his report dated the  
 2nd of December 1803 (Treasury No. 5415), observing “that  
 “ the circumstances stated in the memorial do not appear to be  
 “ sufficient to induce a *departure from the general proportion*  
 “ *given to non-commissioned captors*, and that a grant of two-  
 “ thirds of the net proceeds, after deducting all expenses on

“behalf of the Crown, will be a proper remuneration to the captors.”

The same proportion also was granted in the next case, that of the “Cornelius and Maria” (Warrant No. 74), a Dutch vessel, captured by the privateer “Catherine and Mary,” before the declaration of war against Holland in 1803.

*Subsection 6: Distinction for the First Time in favour of Ships of the Royal Navy.*

Hitherto no distinction had been made between ships of the Royal Navy and other vessels as to the proportions proper to be granted out of prizes captured at sea, and which had been condemned as droits; no distinction, at any rate, to the advantage of ships of the Navy. All had for some time past, whether ships of the Royal Navy, privateers, Revenue cruisers, or non-commissioned vessels, received two-thirds of the proceeds, whenever the prizes had been condemned as droits, whether droits of Admiralty or droits of the Crown.

Indeed, we have seen that private ships of war had in early times been ordinarily more favoured than ships of the Royal Navy in regard to the proportions which they took of the proceeds; that before Henry VIII. ships of the Royal Navy took but one-half whilst privateers took the whole of any captures they might make during hostilities. And under William and Mary privateers took the whole of the ships and four-fifths of the cargoes, whilst ships of the Royal Navy received only one-third of the proceeds. And in the case of the “Helen,”\* which appears to have been argued in the early part of 1801, Dr. Swabey is reported to have said that “it is a very ancient rule of the Admiralty that ships in the public service take less benefit in prize than ships of private persons, which are fitted out at their own expense, and frequently, even in cases of the most successful capture, lose the object of their voyage.” That was a case of recapture from the enemy by a Revenue cutter having a letter of marque, and the question was, whether the Revenue cutter was entitled to one-eighth only of the value of the property, which was the proportion awarded to King’s ships under the Act of Parliament, or to one-sixth, the proportion to which a private ship of war would be entitled. Dr. Swabey, who was retained for the owners of the recaptured vessel, contended that the Revenue cruiser, being hired and equipped for the public service, was entitled only to one-eighth of the value, but the court held that the Revenue cruiser must be considered as a private ship of war, and that she was consequently entitled to the larger proportion, one-sixth.

Now although this had undoubtedly been the practice, and any distinction, when made between ships of the Royal Navy and

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\* 3 C. Rob. 225, 1 E.P.C. 299.

private ships, had been hitherto in favour of the latter ; certain it is, that at this period, that is to say, in the beginning of 1805, when the applications began to come in for grants on account of captures made during the wars with France and Holland in 1803, a difference was for the first time made to the prejudice of private ships. For, whilst ships of the Royal Navy continued to take two-thirds of the proceeds of such droits, as they might capture at sea, privateers, Revenue cruisers and all non-commissioned vessels henceforth took but a moiety.

Whatever be the cause, to which we are to attribute this distinction, whether it was thought that privateers had then become too numerous, and that it was expedient not to offer too great an encouragement to the practice of fitting them out, or whether we are to attribute the change to a judgment of the Court of the Admiralty, to which I will presently refer, certain it is that from that time in all grants to captors out of the proceeds of prizes at the disposition of the Crown, the proportion awarded to a ship of the Royal Navy was, as will hereafter be seen, greater than that awarded to any other description of captor.

The circumstances, which appear to have first given rise to the proportion hitherto granted to privateers, Revenue cruisers and others being diminished, are as follow :—

It has before been observed that some doubts were entertained on the breaking out of the war with France in 1803, whether it was either desirable or proper to grant letters of marque to Revenue cruisers. These doubts were ultimately removed, and letters of marque were then granted to them. In the meantime, however, several prizes had been taken by them from the French. These were, of course, condemned as droits of Admiralty, the captors being non-commissioned.

Amongst others, a French vessel called the “ Four Sisters ” had been captured on the 27th of May 1803 by the Revenue cutter “ Providence ” and, having been proceeded against in the High Court of Admiralty, was condemned as a droit of Admiralty, the Revenue cutter not having been duly commissioned to make the capture. On an application being subsequently made by the captors for a grant, the King’s Proctor, in his report dated the 24th of April 1804 (Treasury No. 1955), observes “ that as “ the ‘ Providence ’ Revenue cutter was non-commissioned at the “ time of the capture the proportion, which would be given if “ the vessel were the property of private parties would probably “ be two-thirds, of which one-half would be allowed to the “ owners, the other half distributed amongst the officers and “ crew. But it is material to observe that the grant and “ distribution of prizes taken by Revenue cutters are reserved to “ His Majesty, both by the proclamation and the Prize Act, “ probably upon the ground that these vessels are fitted out “ by the public, and not at the risk and expense of private “ parties. In regard to the officers and men on board these

“ cutters, who have been personally engaged in those captures, and exposed to the risk and danger of resistance, they appear to be entitled to at least as liberal a reward, as if they had been on board non-commissioned vessels belonging to private individuals, to which vessels a reward of two-thirds of the net proceeds of captures made at sea has generally been granted, one moiety of which is paid to the owners, and the other moiety of two-thirds only is distributed to the captain, officers, and crew according to the articles usually entered into between them for that purpose ; but it is most humbly submitted to your Lordships whether it would be improper to reward the officers and crews of the Revenue cutters to an extent beyond what those of private commissioned vessels take as before mentioned, by granting a moiety of the net proceeds of the prizes to be distributed amongst the captains, officers and crews of the cutters in question.”

On the same day, the 24th of April 1804, the King's Proctor reported (Treasury No. 1956), in the case of the French vessel “Diana,” captured under precisely similar circumstances by the Revenue cutter “Dolphin” and likewise condemned as a droit of Admiralty, “that there appears to be no material distinction between this case and that of the ‘Four Sisters,’ to my report upon which case transmitted herewith I therefore beg permission to refer your Lordships, and to submit that the same course appears to be advisable in respect to both these captures.”

Accordingly, it would appear from minutes endorsed on these reports that a moiety only of the proceeds was granted in each case. The warrant in the case of the “Four Sisters,” however, cannot now be found. It was certainly presented, for there is a minute of the Court of Admiralty dated the 9th of August 1804, ordering the payment of the amount pursuant, as it states, to King's warrant. The warrant itself has, however, probably been lost. But that in the “Diana” bears date the 18th of July 1804, and is numbered 68 in the accompanying register.

The rule, which had thus been adopted in regard to captures effected at sea by Revenue cutters *during* hostilities, of granting only one moiety of the proceeds was very soon afterwards extended to captures by the same class of vessels *before* hostilities. For the very next case of the kind is that of the “Catherina and Nelotta” (Warrant No. 80), a Dutch vessel captured on the 28th of May 1803, under the embargo by the Revenue cutter “Dolphin,” and condemned as a droit of the Crown on the breaking out of the war with Holland. The King's Proctor in his report on that case, dated the 12th of November 1804 (Treasury No. 5304), merely observes “that the capturing vessel *being a Revenue cutter and non-commissioned*, a moiety of the proceeds, after payment of all expenses, will be a fit reward to be granted.”



In the next case we find the grant of a moiety extended to a capture by a purely non-commissioned vessel. This was the case of the "Flora" (Warrant No. 82), captured on the 30th of May 1803, under the embargo by the non-commissioned pilot cutter "Hope." The King's Proctor, in his report on that case, dated the 29th of December 1804 (Treasury No. 6117), observes "that in consequence of a recent decision of the Court of Admiralty upon a case referred to it by the Lords Commissioners of the Admiralty, under similar circumstances, a moiety of the net proceeds after deducting all expenses, appears to be a just reward to be given to the non-commissioned captors." And accordingly a grant to that extent was made to them.

What was the decision to which reference is here made, I have in vain endeavoured to discover. I have searched the Assignment Books of the Court of Admiralty for several years, but cannot find a trace of any such decree having been made at or about the period in question. I do not, however, conclude from this circumstance that the King's Proctor was in error in stating that such a decision had been then recently given, for the Court books at that time were not always kept with the same accuracy as they have since been. I am rather inclined to think that there must have been such a decision, but that it has been accidentally omitted to be entered in the Court books. The only case, indeed, which I have been able to find having any resemblance to it is that of the "Three Sisters," a vessel under American colours, which was driven by stress of weather into Falmouth Harbour, and was there seized by His Majesty's armed cutter "London Packet." The ship was subsequently restored, but the cargo was condemned as a droit of Admiralty, and by an entry in the Court books I find that on the 17th July 1802, the Admiralty Proctor prayed the Judge to reward the commander, officers, and crew of the "London Packet," as to him should seem meet, and that the Court gave the captors a moiety of the proceeds. This was, however, a capture in port and not a capture at sea, and the capturing vessel was a King's ship, and not a non-commissioned one.

But however this may be, it is certain that henceforth one moiety was considered to be the reward proper to be granted, out of the droits for captures at sea by privateers, Revenue cruisers, and non-commissioned vessels.

Thus, on the 18th of May 1805, we find a moiety granted in the case of the Dutch vessel, "St. Iago" (Warrant No. 104), captured on the 22nd of June 1803 by the non-commissioned cutter "Dolphin," tender to H.M.'s ship "Salvador del Mundo," and the privateer "Henry." They had been condemned as a droit of Admiralty in consequence of the "Dolphin" having had no commission, and the privateer not having at that time obtained letters of marque against Holland. The King's Proctor, in his report on that case dated the 25th of April 1805

(Treasury No. 2190), observes "that the property in question, " having been taken jointly by the 'Henry' of Liverpool, and " the 'Dolphin' cutter, both non-commissioned vessels, a " moiety of the net proceeds, after payment of all expenses on " behalf of His Majesty's Government, will be a fit reward to " be granted to the captors," and he adds that "this distribu- " tion is submitted in consequence of the grant made by your " Lordships in the case of 'La Bonne Soci  t  ,' upon which a " special report was made respecting vessels fitted out under " the name of tenders, by ships of war, whilst lying in port."

It is strange that the case of "La Bonne Soci  t  " should be here expressly referred to as having been the ground for making a grant of a moiety in this case, for the proportion awarded in that case was two-thirds and not a moiety, although the circumstances in both appear to have been exactly similar. The true explanation of it appears to be that between the periods of making the two grants in question, their Lordships' opinion as to the proportions proper to be granted, in cases of this description, had undergone some change.

After this time cases of this description, in which one moiety was given, became very numerous. Thus a grant to that extent was made on the 25th of June 1805 in the case of the "Jong Vrouw Maria" (Warrant No. 112), a Dutch vessel captured by the privateer "Mars" on the 7th of June 1803 under the authority of the embargo, the King's Proctor, in his report on that case, of the 25th of April 1805 (Treasury No. 2191), observing "that the prize, *having been condemned as* " *taken before hostilities*, and *no particular merit having* " *taken place* on the seizure, a moiety of the net proceeds will " be a fit reward to be granted to the captors."

A similar grant was also made on the 4th of July 1805 in the case of the Dutch vessel "Yda and Kingma" (Warrant No. 117), which was captured on the 12th day of June 1803 under the authority of the embargo by the cutter "Stag," tender to H.M.S. "Prince." And the King's Proctor, in his report on that case, dated the 7th of June 1805 (Treasury No. 3111), observes "that, although in the case of the 'La " Bonne Soci  t  ," which was a prize condemned as a droit of " Admiralty, having been captured, like the present, by a " vessel fitted out by the commander of H.M.'s ships, under the " name of a tender, your Lordships were pleased to recommend " two-thirds of the net proceeds to be granted, directing the " reward to be distributed among the commander, officers, and " crew of H.M.'s ship to which the capturing vessel was acting " as tender; yet it is necessary to state that, in that case, the " capture was made from the French *after* the declaration of " hostilities, but in the present case the capturing vessel is not " only liable to be considered as non-commissioned, but the " capture was made from the Dutch *previous to* the declaration " of hostilities; and if it had been effected by the King's

“ ship herself, it is probable that not more than two-thirds would be granted. It is therefore submitted that a moiety of the net proceeds, after payment of all expenses on the part of H.M.’s Government will be a fit remuneration to the captors, unless, on account of the proceeds not being of considerable magnitude and the officers and crew of H.M.S. ‘Prince,’ who are to share, being numerous, your Lordships may think it proper in this case also to grant two-thirds.”

Similar grants of a moiety were also at this period made in the following, amongst other, cases :—

On the 20th of August 1805, in the case of the “Maastrom” (Warrant No. 124), a Dutch vessel captured, on the 3rd of June 1803, under the authority of the embargo, by a lieutenant and part of the crew of H.M.S. “Malta” on board a hired fishing vessel.

On the 13th of September 1805, in the “Anna Sophia” (Warrant No. 129), another Dutch vessel captured, on the 4th of June 1803, by the non-commissioned cutter “Pearl,” tender to H.M.S. “Canopus.”

On the 16th of the same month, in the “Vrouw Gertruy” (Warrant No. 133), another Dutch vessel captured, on the 4th of June 1803, by the privateer “Lion.”

On the 11th of November 1805, in the “Anna and Louisa” (Warrant No. 150), another Dutch vessel captured, on the 6th of June 1803, by the Revenue cutter “Dolphin.”

On the 26th of the same month, in the case of two French and two Dutch vessels (Warrant No. 152) captured by the Revenue cutter “Hinde,” victualled, manned, and armed from H.M.S. “Conqueror.”

On the 17th of January 1806, in the “Hoophandel” (Warrant No. 158), captured on the 9th of June 1803 by the privateer “General Small.”

During the whole of this period, however, King’s ships, for captures of the same description, continue to receive, as formerly, a grant of two-thirds of the proceeds.

Thus, on the 15th January 1805, two-thirds of the proceeds of the “Sara Maria” (Warrant No. 81), a Dutch ship, captured on the 2nd of June 1803 by H.M.S. “Acasta,” were given to the captors.

On the 14th of February of the same year, two-thirds of the Dutch ship “Jonge Jan en Pieter” (Warrant No. 85), captured on the 19th of May 1803 by some of H.M.’s ships, were given to the captors.

Two-thirds also were granted to King’s ships in the case of :—

“Vrouw Elizabeth” (Warrant No. 92),

“Nieuw Euphrata” (Warrant No. 93),

“Orion” (Warrant No. 95),

“Elizabeth” (Warrant No. 96),

and in a host of others, all Dutch ships, captured under the embargo issued prior to the declaration of war in 1803.

The exceptions to the rule are but three, and in each of those cases the whole proceeds were given on account of the smallness of their respective amounts.

Thus, in the case of the "Heuxtochamp," "Drie Gebroiders," and "Rising Sun" (Warrant No. 86), Dutch vessels captured on the 9th and 10th June 1803 by H.M.S. "Penelope," and where the proceeds of the three ships and their cargoes amounted to only 505*l.* 3*s.* 4*d.*, the whole proceeds were given.

In that of the "De Vreede" and "Gerardius Maria" (Warrant No. 98), Dutch vessels captured in June 1803 by H.M.'s frigate "Fortunée," and where the proceeds of the two vessels amounted to only 117*l.* 0*s.* 5*d.*, the whole proceeds again were given. And the warrant in this case states "that Our said Commissioners have recommended unto Us, as the net proceeds, after payment of all expenses, will scarcely exceed the private expenses of the said Henry Vansittart" (the captain of the "Fortunée") "to grant unto him the whole proceeds instead of the usual proportion of two-thirds."

And in the case also of the "Jonge Ary" (Warrant No. 147), a Dutch ship captured on the 28th of May 1803 by the Revenue cutter "Providence," where the proceeds amounted to only 34*l.* 5*s.* 10*d.*, the whole proceeds were again granted to the captors.

There is also the case of the "Frederica and Mary Anne" (Warrant No. 162), but the circumstances of that case, which will be found fully described in the register, are so very peculiar and exceptional that it can form no guide in our present inquiry. In that case one moiety was given to the privateer "Ceres," and one-third of the remaining moiety to the non-commissioned ship "Prince," who were the captors.

Under the war with the Ligurian and Italian Republics of 1803 there was but one case of droits, in which any grant was made. It was that of the "Charitas" (Warrant No. 84), captured by His Majesty's Ship "Blanche" on the 29th of May 1803. The ship having been proved to be Danish property was restored; a portion of the cargo, of the value of about 2,671*l.* 17*s.* 8*d.*, was condemned to the captors as enemies' goods captured during hostilities; but the remainder, of the value of 2,564*l.* 2*s.* 9*d.*, was pronounced to be Genoese property, and on the breaking out of war with the Ligurian and Italian Republics on the 17th of August 1803, the property being still under adjudication was condemned as droits to the Crown. The King's Proctor in his report on that case dated the 12th of November 1804 (Treasury No. 5303) observes "that as the captors have already obtained condemnation to themselves of a large proportion of the property, a moiety of the remainder, which has been condemned to the Crown as captured prior to hostilities against the Ligurian Republic, will be a fit reward to be granted." It is probable that in making this grant the Crown followed the precedent in the



"True Charlotta," which was a case under precisely similar circumstances occurring under the former Genoese war of 1798, and in which also one moiety of the proceeds was granted.

Setting aside, therefore, the few exceptional cases to which we have referred, it is clear that the practice under the French and Dutch wars of 1803 as also under the wars with the Italian and Ligurian Republics at the same period, was to grant two-thirds of the droits to King's ships, and one-half to privateers, Revenue cruisers, and non-commissioned vessels, whether the same were droits of Admiralty or droits of the Crown, whether captured before or after hostilities.

That no distinction was made between droits of Admiralty and droits of the Crown in regard to the proportions granted to the captors is apparent from the Warrant No. 152, under which one moiety of the proceeds of two French vessels captured *during* hostilities by the non-commissioned Revenue cutter "*Hinde*," and consequently condemned as droits of Admiralty, was granted to the captors, and at the same time one moiety of the proceeds of two Dutch vessels captured by the same vessel *before* hostilities, and consequently condemned as droits of the Crown.

#### *Subsection 7: The Spanish War of 1805.*

Towards the end of the year 1804 our relations with Spain having assumed somewhat of a hostile character, and it being feared that it was the intention of the French and Spanish Governments to unite their fleets, orders were given to some of His Majesty's ships of war to detain a Spanish squadron, which was shortly expected to arrive in the Port of Cadiz, as also to prevent any Spanish vessels of war from leaving their respective ports.

In pursuance of these orders the Commander of H.M.S. "*Indefatigable*" stationed himself off the Port of Cadiz, where he was soon afterwards joined by three other British frigates, the "*Lively*," "*Medusa*," and "*Amphion*." At about 8 o'clock of the 5th of October following they observed a squadron of four large Spanish frigates making for the Port of Cadiz, and immediately gave chase, and after a few hours came up with them, and each of the English frigates took up its station alongside one of the Spanish vessels, and having hailed them without effect a shot was fired across the forefoot of the Spanish Rear-Admiral's ship. Upon which they immediately brought to, and a boat was then sent from the "*Indefatigable*" to inform the Spanish Admiral of the orders, which they had received to detain his squadron, and their anxious wish that this might be effected without bloodshed, but an unsatisfactory answer having been returned and one of the Spanish ships having fired into the "*Medusa*" a general action commenced, the result of which was that one of the Spanish vessels, "*La Mercedes*," was blown up, and the three others, "*La Medea*," "*La Fama*," and

“La Clara” were captured. They were found to be laden with very valuable cargoes and to have a large quantity of bullion on board.

This celebrated action of the frigates and the orders of the British Government, which had preceded it, necessarily led to acts of hostility being committed by the cruisers of both nations, and the result was that a great number of Spanish vessels, many of them having on board large quantities of bullion, were captured and brought into port. Notwithstanding, however, these proceedings, it was not until the 19th of December following that an order of embargo against Spanish property was issued, and war was not declared until the 11th of January 1805.

On the breaking out of this war the usual prize proclamation was issued, by which the whole benefit of any captures which might be made during *hostilities* by King's ships or duly commissioned privateers was granted to the captors. The vessels, however, which had been captured before the declaration of war and before even the issue of the embargo, were, as usual, condemned to the Crown as *droits*; and it then became a question, looking to the values of those vessels and their cargoes, and more particularly to the large amount of specie which many of them had on board, as to whether the same proportion which had been granted for similar captures in the preceding wars should likewise be granted in this. The result was that two important alterations were made in the proportions to be granted to captors, the one having reference to any bullion or specie that might be captured, the other to the greater or less value of the ship and cargo.

*Subsection 8: Grant out of Bullion in respect of Captures  
of Ships of the Royal Navy.*

It has been before observed that a large quantity of bullion was found on board the three Spanish frigates which were captured in the action of the 5th of October 1804; but what that amount was I have not been able to ascertain. After the condemnation of these vessels, their cargoes, and the specie on board to the Crown, the usual memorial was presented on behalf of the captors for a grant, which was, as usual, referred to the King's Proctor. I regret to say, however, that I have not been able to find either the memorial or the King's Proctor's report thereon; the latter is marked Treasury, No. 2610/1805, and the memorial is doubtless attached to it, but although diligent search has been made for them amongst the Treasury records, they cannot anywhere be found. I have, however, found what is perhaps of more importance, namely, their Lordships' minute upon the King's Proctor's report; it is dated the 31st of July 1805 and is in the following words:—"My  
“ Lords, taking into consideration the circumstances of the

“ capture, together with the value of the property captured, are pleased to grant to the captors the whole of the proceeds of the ships and of all such parts of their cargoes as did not consist of bullion, after paying all expenses attending the condemnation and sale thereof, together with *one-fifth part* of the proceeds of such bullion after deducting such proportions thereof as may belong to the officers, crews, or passengers on board the said captured ships”; and it concludes by directing that a warrant should be prepared to that effect. Subsequently, however, but under what circumstances I have not been able to ascertain, their Lordships thought proper to increase the proportion of the bullion awarded from one-fifth to one-fourth, and accordingly on the 25th of September 1805 a warrant (No. 136) was issued, granting the whole proceeds of the ships and cargoes and one-fourth part of the bullion to the captors.

And here I should observe that in this case the whole proceeds of the ships and cargoes were granted because the prizes were vessels of war and had been captured after an engagement. It had been the practice in previous wars—a practice which we shall also find to have prevailed in all subsequent wars—to grant to the captors the whole proceeds of any ships of war, privateers, or other armed vessels which they might capture from the enemy before a formal declaration of war, but of this hereafter.

To return, then, to the subject of bullion. The proportion of one-fourth of the bullion, which, as we have just seen, was granted in the case of the Spanish frigates, continued from that time to be the rule, at least in regard to captures thereto by King’s ships at sea wherever the same had been condemned as droits. Not, indeed, where the capture had been made during hostilities, for then the King’s ship took under the prize proclamation the whole proceeds, but where the capture had taken place before hostilities, and where it had, consequently been condemned as a droit to the Crown.

The next case in which a grant out of bullion was made appears to be that of the Spanish vessel “San Miguel,” *alias* “La Felix,” captured on the 7th of December 1804 by H.M.S. “Lively.” Neither the memorial nor the King’s Proctor’s report (which is marked Treasury No. 7116/1805) can be found, but their Lordships’ minute thereon, which bears date the 29th of January 1806, is in the following words:—“Prepare warrant for two-thirds of the proceeds of the ship and cargo (except the bullion) and for one-fourth of the bullion.” And accordingly a warrant (No. 163) was, on the 4th of February 1806, issued, granting those proportions to the captors.

The next case is that of “El Ynfante don Carlos,” captured on the 27th of December 1804 by H.M.S. “Diamond,” and in which a grant of one-fourth of the bullion (Warrant No. 191) was made on the 20th of May 1806 to the captors. The King’s

Proctor, in his report on that case, bearing date the 28th of March 1806 (Treasury No. 1969), states "that one-fourth of the bullion and two-thirds of the net proceeds of the ship and cargo will be a fit reward to be granted to the captors."

On the 24th of May three other similar grants were made (Warrants Nos. 192, 193, and 195), and in one of those cases, the "Guixolensa," captured by H.M. Ships "Narcissus" and "Maidstone," the King's Proctor, in his report thereon, bearing date the 25th day of February 1806 (Treasury No. 1108), states "that a grant of two-thirds of the net proceeds (except the bullion), after payment of all expenses on the part of the Crown, will be a fit remuneration to the captors conformably to what has been usually done in other cases under similar circumstances. In respect of the bullion, the Crown, in the case of the 'San Miguel,' was pleased to grant one-fourth of it to the captors, that being a merchant ship taken without resistance by His Majesty's Ship 'Lively.'"

Numerous other grants of the same proportion follow, into the details of which it is not necessary to enter; it should, however, be observed that the proportion of one-fourth to King's ships appear to have been made quite independently of whether the amount of the bullion was large or small. Thus, in the case of "El Ynfante don Carlos" (Warrant No. 191), where the bullion amounted to 28,142*l.* 15*s.* 6*d.*, one-fourth was granted to the captors; and in a few days afterwards, in the case of "La Maria" (Warrant No. 195), where the bullion was only 257*l.* 15*s.* 3*d.*, the same proportion was likewise granted; and again, in the case of the "Santa Gertruyda," where the value of the bullion was no less than 286,660*l.* 16*s.* 7*d.*

#### *Subsection 9: Grant out of Bullion to Privateers.*

Hitherto we have been considering grants to ships of the Royal Navy only, but we now come to grants to privateers out of bullion captured before hostilities, and which had consequently been condemned as droits.

On the 10th of June 1806 a grant of this description was made in the case of the "San Antonio," *alias* "Los Dos Amigos" (Warrant No. 207) to the privateer "Minerva"; and on 22nd of July 1807, in the case of the "Aquila" (Warrant No. 252) to the privateer "L'Invention," and in both cases one-fifth of the bullion was granted to the captors. I have not been able to find either the memorial or the King's Proctor's report in the former of these two cases, but I have in the latter, and I have thus learnt the grounds upon which one-fifth of the bullion was granted to privateers, whilst one-fourth continued to be awarded to King's ships.

In his report in the case of the "Acquilla" bearing date the 31st of March 1807 (Treasury No. 2182), the King's Proctor observes "that the grant of a moiety of the ship and cargo, after payment of all expenses on the part of the Crown, will be a



“ fit reward to the owners, commander, and crew of the private ship of war ‘L’Invention,’ to be divided and distributed according to their articles on taking out letters of marque. In respect, however, to the bullion, it is proper to state that one-fourth has been granted to King’s ships; but as a smaller proportion of ships and cargoes has been usually granted to privateers than to His Majesty’s ships, namely, a moiety instead of two-thirds, so it is submitted that one-fifth instead of one-fourth of the bullion should be granted in this instance.” And from this time we find that in all cases of grants out of bullion captured before hostilities one-fourth was always granted to King’s ships and one-fifth to privateers, no matter what may have been the value of the bullion.

We have seen that, in the French and Dutch wars of 1803), the proportion of the proceeds of ships and cargoes condemned as droits, which was usually granted to captors, was two-thirds to ships of the Royal Navy, and one moiety to privateers and others, and this, too, quite independently of the amount of those proceeds. Thus we find that by one and the same warrant (No. 152) the Revenue cutter “Hinde” received a moiety of the proceeds of the French vessel “Félicité,” amounting only to 77*l.* 17*s.* 3*d.*, and the same proportion of the proceeds of the vessel “Jan Frederick,” which amounted to no less than 40,325*l.* 6*s.* 1½*d.*

Again, two-thirds of the proceeds of the Dutch vessel “Twee Gesusters,” amounting only to 170*l.* 13*s.* 10*d.*, were, on the 25th of September 1805, granted by Warrant No. 135 to H.M.S. “Doris”; and, on the 6th of July in the same year, the same proportion of the proceeds of the Dutch vessel “Henrietta” (Warrant No. 104), amounting to no less than 104,723*l.* 0*s.* 9*d.*, to H.M.’s Ship “Lapwing.”

The circumstances of the latter case exhibit so clearly the principles upon which the Government proceeded at that time that I will state them at length. It would seem that the captors had applied for the whole of the proceeds on the ground that the Crown had already received no less than 96,216*l.* 17*s.* 6*d.* out of the gross proceeds in the shape of duties on the sale of the cargo; but the Crown refused to accede to that application. The grounds of that refusal are stated in the following passage, which will be found in the warrant:—“ And whereas Our said Commissioners have represented unto Us that considering the magnitude of the property, that the capture was made without resistance, and the expediency (unless under very extraordinary and very special circumstances) of adhering to the general rule in respect to the proportion to be granted to captors, as best tending to avoid creating dissatisfaction in the service, it appears that no sufficient grounds are stated for granting more than two-thirds of the nett proceeds of the prize, after payment of all expenses incurred on the part of Government, as a remuneration to the captors.”

*Subsection 10: Proportions granted out of Ships and Cargoes begin to vary with the Amount of Proceeds.*

Such, then, was the principle adopted by His Majesty's Government in making to captors grants out of the ships and cargoes which had been condemned as droits, down to the end of the year 1805. At the beginning, however, of the year 1806 when applications began to come in and grants to be made on account of the Spanish captures, the value of which were frequently very great, it would seem to have been thought that the proportion to be granted to the captors ought in some measure to vary with the amount of the proceeds in each case, and that a somewhat smaller proportion ought to be given where the proceeds were very large.

The first instances, in which less than the usual proportions were granted, occurred on the 20th of March 1806, not very long after a determination had been come to by the Government as has been stated above, to grant only one-fourth of the bullion to the captors. The cases, to which I refer, are those of the French vessel "Mentor" and the Dutch vessel "Planter's Wensch" (Warrant No. 168) both captured by the Revenue cutter "Eagle," the former during hostilities but before the "Eagle" had obtained letters of marque, the latter before a declaration of war against Holland. The King's Proctor in his report in those cases, dated the 16th of October 1805 (Treasury No. 5797), observed "that upon the grounds stated in former reports respecting captures made previous to a declaration of hostilities by vessels in the service of the Revenue, or while such vessels are non-commissioned, a moiety of the net proceeds after payment of all expenses on the part of the Government will be a fit remuneration to be granted to the 'Eagle' cutter." Instead, however, of adopting the King's Proctor's recommendation to award one moiety, their Lordships thought proper to grant only one-third, probably on the ground that the proceeds were so large, those of the "Mentor", alone being no less than 22,728*l.* 6*s.* 10*d.*

A similar course was adopted by the Government in the following month in the case of the Dutch vessels "Vrow Elizabeth" (Warrant No. 179) captured by the Revenue cutter "Active," and the "De Vreede" (Warrant No. 180) captured by the revenue cutter "Renown." In the former of these two cases the King's Proctor, in his report dated the 5th of March 1806 (Treasury No. 1317), observed "that the property in question having been taken by an Excise cutter not duly commissioned, a moiety of the net proceeds, after payment of all expenses on the part of Government, will be a fit reward to be granted to the Excise cutter," and in the latter case in his report of the same date (Treasury No. 1320) he observed "that the capture having been made by a non-commissioned Revenue vessel before hostilities against Holland, a moiety of the net proceeds

“ after payment of all expenses on the part of the Crown; will  
 “ be a fit reward to the captors in conformity to what has been  
 “ done in other similar cases.” Their Lordships, however, did not think fit to accede to the recommendations of the King’s Proctor, but granted in each case one-third instead of one moiety of the proceeds. I have looked up their Lordships’ minutes in both these cases, but there are no reasons assigned for this deviation from the usual course. It was, however, probably owing to the large amount of proceeds in each case, those in the “Vrouw Elizabeth” being no less than 27,459*l.* 4*s.* 3*d.* and in the “De Vreede” 11,125*l.* 15*s.* 2*d.*

In the next case, the “Vrouw Constantia” (Warrant No. 181), a similar course began to be adopted in regard to grants to King’s ships. This vessel had been captured by the fleet under Lord Cornwallis, and the King’s Proctor in his report on the case, dated the 17th March 1806 (Treasury No. 1643), observed “ that a grant of two-thirds of the net proceeds, after payment  
 “ of all expenses on the part of the Crown, will be a fit reward  
 “ to be granted to the captors.” Their Lordships, however, gave them only one moiety, probably in consequence of the proceeds being 14,051*l.* 3*s.*

As yet, however, there does not seem to have been any precise rule laid down as to when the smaller, when the larger, proportion was to be granted to the captors.

For subsequent to the cases which we have just mentioned, we find on the 24th of May 1806 a Warrant (No. 192) issued granting two-thirds of the proceeds of the “Nostra Signora del Carmen,” amounting to 12,432*l.* 14*s.* 10*d.*, to H.M.’s ship “Narcissus.” On the same day also two-thirds of the proceeds of “La Maria” (Warrant No. 195), amounting to 10,458*l.* 4*s.* 2*d.*, were granted to H.M.’s ship “Illustrious” and five other ships of war. On the 27th of the same month two-thirds of the proceeds of the “Pomona” (Warrant No. 198), amounting to 11,559*l.* 16*s.* 9*d.*, were granted H.M.’s ships “Narcissus” and “Halcyon.”

And, again, two days afterwards, on the 29th of May 1806, we find three cases, the “Santa Anna” *alias* “La Conformidad” (Warrant No. 200), captured by H.M.’s ship “Endymion,” in which the proceeds of ship and cargo were 11,991*l.* 18*s.* 2*d.*, the “Matilda” (Warrant No. 201), captured by H.M.’s ships “Donegal” and “Medusa,” in which the proceeds were no less than 24,378*l.* 8*s.* 9*d.*; and the “St. Andero” (Warrant No. 202), captured by H.M.’s cutter “Lucy,” in which the proceeds of ship and cargo were 15,857*l.* 3*s.* 9*d.*, in each of which cases the Crown gave only one moiety to the captors. On the other hand, in the three next cases, the “Nuestra Senora de los Dolores” (Warrant No. 203), where the proceeds amounted to 16,565*l.* 5*s.* 11*d.*, the “Nostra Signora de Regla,” otherwise “El Mercurio” (Warrant No. 204), where the proceeds were 15,966*l.* 9*s.* 2*d.*, and the “Nostra Signora de Legarda,” where

proceeds were 17,802*l.* 8*s.* 2*d.*, in each of which the Crown gave two-thirds to the respective captors.

As a proof, too, that no rule had at that time been laid down by the Government as to when one moiety and when two-thirds should be granted, but that on the contrary two-thirds was supposed by the Crown officers to be the proportion proper to be granted in all cases whatever the amount of the proceeds, where the capture had been made by a ship of the Royal Navy, I would refer you to the King's Proctor's reports in the two first-mentioned cases, the "*Santa Anna*" and the "*Matilda*" (Warrants Nos. 200 and 201), where one moiety only was given. In both those reports, bearing date the 25th February 1806 (Treasury Nos. 1109 and 1111), the King's Proctor recommends "that a grant of two-thirds of the net proceeds, after payment "of all expenses," should be made "conformably to what has "been done in other cases under similar circumstances."

Thus matters continued, ships of the Royal Navy receiving generally two-thirds of the proceeds of the ship and cargo, except when very large, in which cases they sometimes had but one moiety, until the middle of the year 1807, when we come to a class of cases, which should here be mentioned.

It would seem that many of the vessels which had been captured at the end of 1804, previous to the breaking out of the war with Spain were carried into Gibraltar, and were then condemned and sold, and the proceeds were transmitted to this country. From some accident or from the neglect of the agents at Gibraltar, however, no accurate but only an approximate account of the proceeds in each case was transmitted, so that it was impossible to know what the exact amount of proceeds was in each case, and whether the whole of them had been transmitted or not. The captors, however, were desirous of having a grant on account, and the question arose as to what course should, under the circumstances, be adopted.

The first case of the kind, which came before the Government, was that of "*La Guadaloupe*," which was as usual referred to the King's Proctor; and in his report on that case, dated the 15th of May 1807 (Treasury No. 3427), he recommended that a grant should be at once made of one-eighth of the specie, and one-third of the proceeds of the ship and cargo, subject, however, "to a further reward out of the proceeds to "the extent of *one moiety* or *two-thirds* of the ship and cargo; "and one-fourth of the bullion, when the general accounts and "the remainder of the proceeds shall have been transmitted." In pursuance of this recommendation a warrant (No. 247) was, on the 8th of June 1807, issued, granting one-eighth of the specie, and one-third of the ship and cargo; and, subsequently, on the 23rd of May 1808, when the exact amount of the proceeds had been ascertained, a further warrant (No. 296) issued, granting such further sum as would make up one-fourth of the specie, and two-thirds of the ship and cargo.



The next grant, the "Tuenta Hermosa" (No. 248) was likewise a grant of this description. In this case the Crown, on the 9th of June 1807, gave to the captors one-fourth of the specie, and one-third of the proceeds of ship and cargo, subject to a further grant of two-thirds or a moiety of the latter, when the exact amount should have been ascertained. In this case the proceeds were very large, and accordingly we find that on the 9th of May 1898 a further Warrant (No. 287), issued for such further sum as, with the previous grant, would make up one moiety of the proceeds of the ship and cargo.

Many other cases of the same description follow, and they are important only as showing that at this period the principle was recognised, both by the Government and the law officers of the Crown, that the proportion to be granted out of the proceeds of ships and cargoes to King's ships should depend, not so much upon the circumstances of each case, which would, of course, be known when the first grant was made, as upon the amount of the proceeds, which would not be known.

It was, however, not until the early part of the year 1808 that any decision was come to by their Lordships as to the amount, at which the larger proportion should cease and the smaller commence, when in fact the captors should have two-thirds of the proceeds, and when only a moiety. At this time we were at war both with Prussia and with Denmark. An embargo had been laid on Prussian property on the 5th of April 1806 and war declared against that Power on the 14th of May following. An embargo had likewise been issued against Denmark on the 2nd of September 1807, and war declared against her on the 4th of November following. The enormous number of vessels and cargoes, which had been seized under these embargoes, and which were subsequently condemned, their value and the numerous grants which had consequently to be made, probably led to more precise and definite rules being issued on the subject.

The cases, however, which immediately led to those rules being laid down, were those of the Spanish vessels "San Miguel Archangel" and "Nostra Senora del Rosario" (Warrant No. 273), both captured previous to hostilities by H.M.S. "Princess Charlotte." The proceeds in these cases were respectively 12,576*l.* 19*s.*, and 2,052*l.* 4*s.* 7*d.*, and the King's Proctor in his report of the 15th of January 1808 (Treasury No. 548) had recommended in accordance with former precedents a grant of two-thirds of the proceeds in each case. Their Lordships, however, by a minute bearing date the 19th of January 1808, were pleased to order a warrant to be prepared for one moiety only in the case of the "San Miguel Archangel" and two-thirds in that of "Nostra Senora del Rosario"; and they directed that a letter should be written to the King's Proctor acquainting him for the information of the King's Advocate "that where the net proceeds exceed 10,000*l.*, their

“ Lordships consider the grant of a moiety thereof is a fit and proper reward to the captors, except in cases of extraordinary merit on the part of the captors, which might give them a claim to a higher reward, and that their Lordships are also of opinion that in cases where the proceeds shall not exceed 300*l.* it might be proper to reserve to His Majesty one-tenth only of the proceeds, granting the remainder to the captors.”

A practice was thus established of granting to ships of the Royal Navy in cases of this description—

Nine-tenths of the proceeds if they were under 300*l.* ;

Two-thirds if between 300*l.* and 10,000*l.* ; and

One-half if above 10,000*l.*

The rule, however, which was thus laid down, was not confined to Spanish captures alone, but was extended to all cases of the same description in the subsequent wars. It is hardly necessary to refer to particular cases, the accompanying register contains a great number of instances of each kind.

Thus in regard to Prussian property we find on the 14th of June 1808, five cases (Warrants Nos. 302 and 303) in which nine-tenths were granted, the proceeds in each case being under 300*l.*, and three cases (Warrants Nos. 299, 300, and 301) where only two-thirds were granted, the proceeds being above 300*l.*, but under 10,000*l.*

So, also, in regard to Danish captures we find on the 18th of January 1810 the same warrant (No. 460) granting one moiety only where the proceeds were 11,664*l.* 7*s.* 9*d.*, but two-thirds where they were 9,692*l.* 13*s.* 11*d.* Again, on the 29th of March 1811, the same warrant (No. 639) grants nine-tenths in three cases where the proceeds were under 300*l.*, and two-thirds only in six cases, in which the proceeds were above that sum but under 10,000*l.* And, on the 27th of August 1812, a warrant (No. 783) was issued in regard to four Danish vessels, in which we find all the three proportions, namely, one moiety where the proceeds were 10,412*l.* 0*s.* 3*d.*, two-thirds where they were 5,379*l.* 1*s.* 1*d.* and 3,936*l.* 7*s.* 11*d.* respectively, and nine-tenths where they were only 126*l.* 1*s.* 6*d.*

It is, however, important to observe that this variation of the proportion according to the amount of the proceeds in each case was not considered as applying to any war prior to that of 1805 with Spain when it was first established ; for we find so late as the 19th of July 1814 a grant (No. 859) made for the capture on the 13th of June 1803 under the Dutch embargo of a vessel called the “ Rotterdam,” in which the proceeds were only 278*l.* 4*s.* 1*d.*, and where only two-thirds and not nine-tenths of the proceeds were granted to H.M. gun brig “ Conflict,” the captors ; the King’s Proctor, in his report on that case dated the 25th of May 1814 (Treasury No. 7726), observing “ that a grant of two-thirds of the net proceeds will be a fit reward to the captors agreeably to the proportion usually granted in cases of the same value in captures under the Dutch embargo.”

The rule, therefore, of varying the proportion with the amount of the proceeds did not apply to the Dutch war of 1803. For other cases of the same description *vide* Warrants Nos. 401, 436, and 668.

Hitherto we have spoken only of grants to ships of the Royal Navy; we will now see what were the corresponding changes which were made in regard to grants under the same circumstances to privateers and others.

I have every reason to believe that prior to the breaking out of the war with Spain in the beginning of the year 1805 there were comparatively but few privateers in the service of this country. Hence we find that very few of the captures made from Spain prior to the declaration of war were by privateers, almost all of them were by ships of the Royal Navy. The only cases, I believe, were "L'Amiable Rita," captured by the privateer "Diana" (Warrant No. 186); the "Saint Antonio," *alias* "Le Dos Amigos," by the privateer "Minerva," (Warrant No. 207); "La Virgine del Carmine" and "L'Aprile" captured by the privateer "Success" (Warrant No. 226); the "Aurora," by the privateer "Neptune" (Warrant No. 231); and the "Acquilla," by the privateer "L'Invention" (Warrant No. 252). And we find that in all these cases the usual proportion of one moiety of the ships and cargoes, as in the former wars, was granted to the captors, and one-fifth, as we have seen, of the bullion captured.

On the breaking out, however, of the wars with Prussia in 1806, and with Denmark in 1807, the seas appear to have swarmed with privateers; and we accordingly find an immense number of captures made by them under the embargoes against those countries, and before the formal declarations of war. Under these circumstances it became necessary to provide a graduated scale of proportions for privateers and others, in the same manner as had been done for King's ships.

The first case, in which we find a deviation from the then established practice of granting one moiety to a privateer, is that of the Prussian vessel "De Jonge Christoffer" (Warrant No. 379), captured by the privateer "Mars." The proceeds in that case amounted only to the sum of 251*l.* 11*s.* 6*d.*, and the Crown accordingly gave four-fifths to the captors. I should state that the prize was captured during hostilities, but was condemned as a *droit* of Admiralty in consequence of the privateer not having at the time of the capture letters of marque against Prussia. The reason why four-fifths was granted in this case seems to have been this. At that time King's ships received nine-tenths, where the proceeds were under 300*l.*, and as it was then an admitted principle that privateers and others always took under the same circumstances a somewhat smaller proportion than King's ships, four-fifths appears to have been fixed upon from no other reason, I presume, than because it was somewhat less than nine-tenths.

However this may be, from this time four-fifths appears to have become the regular proportion granted to privateers and others (not King's ships), wherever the proceeds were under 300*l*. Thus, on the 18th day of January 1810, four-fifths of the Prussian cargo of the "Frederica" (Warrant No. 461) were granted to the privateer "Miranda," the proceeds being only 57*l*. 3*s*. 5*d*. Again, on the 23rd of February following, four-fifths of the Danish vessel "Nordlyset" (Warrant No. 478), were granted to the Revenue cutter "Eagle," the proceeds being 171*l*. 14*s*. 5*d*. Also, on the 28th of March 1810, four-fifths of the proceeds of the Prussian ship and cargo "Jonge Berend Van Olst" were granted to the Revenue cutter "Ranger," the proceeds being 181*l*. 7*s*. 1*d*. And on the 7th of August 1810, we find the same warrant (No. 573) granting four-fifths of one Danish prize, the proceeds of which were only 147*l*. 4*s*. 9*d*., and one moiety of two others, the proceeds of which were respectively 321*l*. 2*s*. 1*d*. and 495*l*. 2*s*. 10*d*. Many other cases of this kind will be found, should it be required, on examining the register subsequent to that period.

Such then was the practice in regard to proceeds under 300*l*., let us now see what the practice was when the proceeds exceeded 10,000*l*.

The first case which we find is that of the "Die Gute Freundschaft" (Warrant No. 542), a Danish ship captured on the 17th of October 1807 by the privateer "Tartar," and afterwards on the breaking out of the war with Denmark condemned as a *droit* of the Crown. The King's Proctor, in his report on that case of the 8th of May 1810 (Treasury, No. 5,204) observes, "that the proceeds in this case, amounting to the sum of 10,374*l*. 13*s*., it is referred to their Lordships to determine what the proportion should be, since the scale hitherto acted upon has not fixed any rate for captures by privateers exceeding the value of 10,000*l*. That for sums between 300*l*. and 10,000*l*. His Majesty's ships have been usually allowed two-thirds and privateers one-half, and for sums exceeding 10,000*l*., His Majesty's ships have been allowed one-half. But that no case has occurred of that amount in the capture of privateers, wherein a grant has been made, since the rate above-mentioned was established in 1808. That it will be proper that the rate should be proportionally diminished, and that His Majesty's advocate himself submits whether two-thirds might not be a fit rate for privateers in cases in which His Majesty's ships are allowed one-half."

Acting on these suggestions, their Lordships were pleased, by a minute, bearing date the 11th May 1810 (No. 5,204), to order a warrant to be prepared for two-fifths of the proceeds, and they at the same time directed the King's Proctor to be informed that "it is their Lordships' intention to recommend it to His Majesty to grant this proportion to privateers detaining vessels under similar circumstances in cases when



“ the proceeds shall exceed 10,000*l.* and be less than 20,000*l.*,  
 “ and three-eighths in all cases where the proceeds shall exceed  
 “ 20,000*l.*”

The directions thus given seem to have been always afterwards adhered to. Thus on the 6th of October, 1810, in the case of the “ *Die Gesellschaft* ” (Warrant No. 602), two-fifths were granted to the privateer “ *Busy*,” the proceeds being 13,586*l.* 17*s.* 6*d.*, and on the 4th of March 1811, we find a warrant (No. 625) issued, granting in one case four-fifths, the proceeds being only 93*l.* 6*s.* 3*d.*, in five other cases, one moiety, the proceeds being between 300*l.* and 10,000*l.*, and in another case, two-fifths, the proceeds being 10,947*l.* 16*s.* 8*d.* There is also one instance of three-eighths having been given, namely, in the case of the “ *Sirius* ” (Warrant No. 787), captured by the privateer “ *Ambuscade*,” and where the proceeds were 21,368*l.* 8*s.* 5*d.*

Thus, then, were the following proportions established in regard to droits, whether captured in pursuance of an embargo and before a formal declaration of war, or by a non-commissioned vessel in time of hostilities:—

- (1) If the proceeds were under 300*l.*—  
     Nine-tenths to ships of the Royal Navy,  
     Four-fifths to privateers, Revenue cruisers and others.
- (2) If between 300*l.* and 10,000*l.*—  
     Two-thirds to ships of the Royal Navy,  
     One-half to privateers and others.
- (3) If between 10,000*l.* and 20,000*l.*—  
     One-half to ships of the Royal Navy,  
     Two-fifths to privateers and others.
- (4) If above 20,000*l.*—  
     One-half to ships of the Royal Navy,  
     Three-eighths to privateers and others.

These proportions were maintained not only through the Prussian and Danish wars, but in all our subsequent wars down to the Peace of 1815.

To show, too, how strictly these proportions were adhered to, I will here mention two rather remarkable cases which occurred, and in which the proportions, granted by previous warrants, were altered in consequence of an alteration having subsequently taken place in the amount of the net proceeds.

One of those cases was that of the Danish ship “ *Delphin*,” captured by the privateer “ *Lion* ” on the 27th of August 1807, in pursuance of an order to detain Danish vessels, but before a declaration of war against that country. This vessel was subsequently, on hostilities ensuing, condemned as a droit of the Crown, and upon a memorial from the captors, the proceeds being then thought to amount to 306*l.* 9*s.* 10*d.*, a warrant (No. 711) was issued granting the usual proportion, namely, a moiety of the net proceeds to the captors. Subsequently

thereto, however, a sum of 41*l.* 8*s.* 6*d.* was deducted by the Danish commissioners, thus leaving only 265*l.* 1*s.* 4*d.* as the net proceeds, and upon a further memorial from the captors, and a report of the King's Proctor thereon, dated 12th May 1813 (Treasury No. 6,609), their Lordships issued a new warrant (No. 813), granting the captors four-fifths of the net proceeds.

The other case is that of the "Frederick Julius Kaas," a Danish ship captured by the privateer "Lion" on the 23rd of August 1807, under similar circumstances to the preceding one. The proceeds appearing to amount only to 7,996*l.* 12*s.*, one moiety thereof was by warrant (No. 711), dated the 26th of September 1811, granted to the privateer, that being the usual proportion on such amounts. Subsequently, however, a further sum was paid into the registry on account of the same prize, thereby making the whole of the proceeds amount to 11,415*l.* 7*s.* 5*d.*; and upon a memorial from the captors praying for a grant upon the further amount, a warrant (No. 775) was, on the 26th of June 1812, issued for the sum of 653*l.* 10*s.* 10*d.* only, being the difference between the amount already received by the captors and two-fifths of the whole proceeds, thus altering the proportions from one moiety to two-fifths in consequence of the proceeds being found to exceed 10,000*l.* The captors remonstrated very strongly against this apparent injustice, stating that had the property netted been only 9,990*l.* they would have received one moiety or 4,995*l.*; whereas, the proceeds having realised 11,415*l.* 7*s.* 5*d.*, they had only received 4,566*l.* 2*s.* 10*d.*, and they prayed to be allowed one moiety of the proceeds up to 10,000*l.*, and two-fifths of the excess beyond that amount. In a report, however, from the King's Proctor, bearing the date the 12th of May 1813 (Treasury No. 6608), it is stated that "the subject was considered by their Lordships on representations, very similar in the case of the 'Expedite,' 24th December 1811, in which the captors contended for the option of the proportion on the lower sums in cases where it might be more beneficial to them. It seemed then to be their Lordships' opinion that, as the several classes were formed on a broad scale for the benefit of captors, and as no such mode of computing the proportions on the lower classes had ever been adopted, it would not be expedient to make exceptions that would destroy the uniformity of the general rule and lead, if pursued to the full extent, to the adoption of a more minute scale, which would not be convenient or advantageous to the captors."

This passage is not quoted with a view to show the wisdom of the decision, or the force of the King's Advocate's arguments as expressed by the King's Proctor, but rather to show the strict adherence to the scale, which had been determined upon, even when its application was attended, as in the last case, with very great injustice to the captors.

*Subsection 11: Capture at Sea before Embargo and before Orders to Detain.*

I will now call attention to a very important class of cases, namely, captures at sea before an embargo and before any orders to detain, in regard to which a distinction would seem to have been taken for the first time under the Prussian and Danish wars. I will illustrate my meaning by an example.

Thus, suppose this country to be at war with some other State, and one of our cruisers to have captured a vessel under the neutral flag on the ground either of her being enemies' property or of her having enemies' property on board.\* Proceedings are commenced in the Court of Admiralty, and if the neutral owner succeeds in establishing his title to the property, it is at once restored to him. Supposing however that, whilst the property was still under adjudication, or even after it had been restored but before it had quitted this country, an embargo had issued against the State to which the property belonged, it would have been immediately seized by the civil officers of the Crown, and if war had ensued, would have been condemned as a *droit* to the Crown.

Now, in all such cases it was, I believe, the practice previous to the Prussian and Danish wars of 1806 and 1807 to grant to the original captors, through whose instrumentality the property had been brought into port and thus placed within the reach of the Crown, the same proportions as if it had been seized by them in pursuance of and under the authority of an embargo or order to detain.

The earliest cases, those of the Spanish prizes "*La Princesa*" and "*La Reine Louisa*" (Warrant No. 21) captured on the 17th of September 1796, the "*San Felix*" (Warrant No. 25) captured on the 6th of the same month, and "*San Juan de Dios*" *alias* "*La Rascongada*" (Warrant No. 28) captured on the 9th of August preceding and in each of which cases two-thirds of the proceeds were granted to the captors, are probably not in point, for although the capture had in each of those cases been made before the embargo against Spain which was not issued until the 21st of September 1796, still, looking to the dates of the respective captures it is not improbable that they were effected in pursuance of special orders from the Admiralty, which was the same thing. But in the cases of the Genoese prizes "*San Nichols*" (Warrant No. 49) captured on the 5th of March, 1797, "*Janus*" (Warrant No. 51) captured in May 1798, and "*Amphion*" captured on the 4th of July 1797, in all of which two-thirds of the proceeds were also granted to the captors, no such probability arises, the embargo against Genoa, not having been issued until the 29th of August 1798, or more than a year after two of these captures had occurred. They could hardly have

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\* *I.e.*, before the Declaration of Paris, 1856.

been made in anticipation of hostilities with Genoa, or in pursuance of any orders from the Government, but probably on suspicion that the property belonged to some other State with which we were then at war; and yet the Crown gave the same proportion as though the capture had been made in pursuance of its express orders.

During the French and Dutch wars of 1803 the case could not arise; for immediately previous to the issue of the embargoes against those States on the 16th of May in that year we were at peace with all the world; no seizures, therefore, could possibly have been made before that date on suspicion of its being enemies' property.

As to the Spanish captures, however, which preceded the war of 1805, it would appear that many if not most of them were made before the issue of the embargo against Spain, which bears date the 19th of December 1804. Thus the "*Nostra Signora del Carmen*" (Warrant No. 192) was captured on the 5th of October 1804, the "*Guixolensa*" (Warrant No. 193) on the 18th of October 1804, the "*Pomona*" (Warrant No. 198) on the 6th of October, the "*Santa Isabel*" alias "*La Victoria*" (Warrant No. 199) on the 22nd of October, the "*El Eco*," the "*Iris*," the "*Virgin del Rosario*," "*Alexandrio*," and the "*Gustaf Adolph*" (Warrants Nos. 237, 256-9), captured respectively on the 21st, 23rd, 26th, 21st, and 17th days of November 1804, and the "*La Purissima Concepcion*" captured on the 6th of October. In all the preceding cases, the capturing vessels being King's ships, the usual proportions, namely, two-thirds of the proceeds were granted to the captors, as though the captures had been made in pursuance of the embargo. Likewise also in the case of the Spanish prize "*Aurora*" (Warrant No. 231) captured by the privateer "*Neptune*" on the 8th of November 1804, one moiety of the proceeds was granted to the captors, being the proportion at that time usually awarded to privateers, as for a capture made in pursuance of an order of embargo. It may, however, be inferred from the circumstances which preceded the celebrated action of the 5th October 1804,\* between the four English and four Spanish frigates, that orders of a certain description had prior thereto been issued for the detention of Spanish vessels. Such orders were no doubt issued to all His Majesty's ships of war and so far these latter may be said in the seizures then made by them to have acted under the orders of the Government; whether any such orders were given to the privateer "*Neptune*," the captor of the Spanish vessel "*Aurora*" is, I should imagine, more than doubtful, so that this capture at all events may be said to have been made without orders from the Government, and yet the captors received the usual proportion, namely, one moiety of the proceeds.

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\* This refers to the action known as "*The capture of the Spanish Treasure frigates.*" See *ante*, page 55.



It was, however, in regard to the Prussian and Danish captures made prior to the wars of 1806 and 1807 that the question first begun to be mooted. From a letter from the secretary to the Treasury to the King's Proctor bearing date the 4th of April 1808, copy of which is to be found among the Treasury records, it would seem that at about the beginning of that year the attention of their Lordships had been called to the fact that in many instances vessels belonging to "States in amity with His Majesty had been brought in, more especially by privateers, and proceeded against in the Courts of Admiralty; that various measures had been adopted by the captors for the purpose of delaying the adjudication, and that even after restitution vexatious appeals had been interposed with the same object, such delays being resorted to upon the speculation that hostilities between the State to which those vessels belonged and this country might possibly break out before the final adjudication of the property," and that they would therefore be entitled to a proportion of the proceeds. In consequence of these representations their Lordships determined that, in order to discourage as much as possible such mischievous and unwarrantable proceedings it would be proper in respect to property captured by privateers belonging to the subjects of any State which at the time of the detention is in amity with His Majesty, and before any order for detaining such property by embargo or otherwise shall have been issued by His Majesty, which property shall in consequence of subsequent hostilities be condemned as prize to His Majesty, that no part of the proceeds of the property so captured should be granted to the captains and owners of such privateers unless some very special circumstances shall appear to entitle them to reward." And the King's Proctor was directed to "advise and consult with the King's Advocate and to report to their Lordships his opinion thereon, and in what mode it might be most expedient to make public their Lordships' determination, so as to deter persons from engaging in such unwarrantable proceedings in future."

Whether any or what advice was given by the King's Advocate or what measures were taken to make known their Lordships' decision, I am unable to say, as I can find no report from the King's Proctor on the subject. It is, however, abundantly clear that it is to this letter and to the circumstances which gave rise to it, that we are to attribute the distinction, which was soon afterwards made in the grants for captures before and after an embargo. It is true that the letter speaks only of privateers and refuses them all share in the proceeds of captures made before embargo. But we shall soon see in what manner this rule was afterwards modified, and how it soon came to be applied to King's ships as well as to privateers.

*Subsection 12: Where the Prize was restored before the issue of the Embargo.*

First then let us inquire what was the policy which was now adopted by Government with respect to captures, not only made but actually decreed to be restored before the issue of an embargo, and of which the original captures at the time, when the property was resealed by the civil officers of the Crown, had no actual, or at all events no legal possession. The earliest case of this kind which I have been able to find, is that of the Prussian vessel "*Hoffnung*" (Warrant No. 280), and as it is one to which frequent allusion was made in the subsequent discussions which took place between the Treasury and the captors, I propose to state the circumstances of that case at length; they are as follows:—

On the 15th of February 1806 H.M.S. sloop "*Amaranthe*" fell in with the Prussian ship "*Hoffnung*," and believing the cargo to be enemies' property, the commanding officer of the "*Amaranthe*" captured her and sent her into port for adjudication. Proceedings were thereupon commenced in the High Court of Admiralty, and on the 22nd of March following the ship and a portion of the cargo having been claimed as Prussian property was decreed to be restored, this country being then at peace with Prussia, and the question as to the remainder of the cargo was reserved. On the 5th of April following, however, and whilst the question as to the remainder of the cargo was still under consideration, a general embargo was laid on all Prussian vessels and goods; in virtue of which the "*Hoffnung*" and that part of the cargo which had been decreed to be restored were resealed under the Order of Government by the substitute of the Marshal of the Court of Admiralty; and upon war subsequently breaking out with Prussia were condemned as droits of the Crown, seized prior to the breaking out of hostilities, and having been subsequently sold realised the sum of 4,830*l.* 15*s.* 1*d.* A memorial was then presented by the captors praying for a proportion of those proceeds to be granted to them on the ground that they had been instrumental in effecting the capture of both vessel and cargo; and upon its being referred to the King's Proctor in the usual way, that officer, under the advice of His Majesty's Advocate-General, reported on the 18th of March 1808 (Treasury No. 2834) "that the seizure of that vessel and cargo, though both were afterwards restored by the Court, was made under circumstances which appear fully to have justified it, that *the restitution had however passed before the Prussian embargo*, and the vessel and goods were finally detained, not by the captors, but under the orders of the Government—that the original capture was certainly the cause of the vessel being in a British port at the time of the embargo, and at all events it would seem to give the captor an equitable claim

“ to the payment of all expenses which he may have incurred,  
 “ the capture itself having been properly made, whether it  
 “ shall entitle the captor to a further remuneration by a grant  
 “ of a portion of the proceeds is submitted to Your Lordships’  
 “ consideration and decision as His Majesty’s Advocate does  
 “ not find any precedent to warrant him in recommending  
 “ either the admission or rejection of his prayer. It is a  
 “ favourable circumstance fit to be stated on behalf of the  
 “ captor that there does not appear to have been the slightest  
 “ vexatious delay in bringing the property in question to  
 “ adjudication, or by withholding his consent to the imme-  
 “ diate restitution of it, otherwise he might possibly have been  
 “ in possession of the property at the time of the embargo.  
 “ And His Majesty’s Advocate ventures to suggest to your  
 “ Lordships that it is of importance to the public interest to  
 “ give every countenance to captors who conduct themselves  
 “ with fairness and liberality towards neutrals.”

This report appears to have been read before the Board on the 20th of April 1808, and a minute was thereupon made in the following words:—“ My Lords, taking into consideration  
 “ that this seizure was made under circumstances which fully  
 “ justified it, although the vessel and cargo were sentenced to  
 “ be restored by the Court on payment of the captors’ expenses,  
 “ and that there does not appear to have been the slightest  
 “ vexatious delay on the part of the captor in bringing the  
 “ property to adjudication or withholding his consent to the  
 “ restitution of it, are pleased to direct a warrant to be prepared  
 “ for granting one-eighth part of the proceeds of the vessel and  
 “ cargo to the captors over and above all expenses which may  
 “ have been incurred by them.” The one-eighth was very shortly afterwards (but under what circumstances does not appear) altered to one-fourth, for the Warrant (No. 280) which issued on the 6th of May following in this case granted to the captors one-fourth of the proceeds.

Soon afterwards another case occurred very similar in all respects to the preceding, but in which the capture had been effected by a Revenue cutter instead of by a King’s ship. The case was that of the “ *Herstelling* ” (Warrant No. 309) captured on the 7th of September 1805 by the Revenue cutter “ *Hunter* ” on suspicion of her having enemies’ property on board. Proceedings were commenced in the Court of Admiralty, and on the 23rd of October following the ship was decreed to be restored, reserving the question as to the cargo and as to freight and expenses. Various proceedings followed in regard to the cargo, and at length on the 19th day of March 1806 it was decreed to be restored on payment of captors’ expenses. Before, however, the amount of those expenses could be ascertained, or the decree of restitution fully carried into effect, an embargo was, namely, on the 5th of April 1806, issued against all Prussian goods; and the cargo of the

“Herstelling” was accordingly re-seized by the Civil Officers of the Crown, and upon war breaking out with Prussia was condemned as *droits*. Upon this an application was presented on behalf of the original captors, through whose instrumentality the property had been brought within the reach of the Crown, for a grant out of the proceeds; and the King’s Proctor in his report thereon dated the 14th of March 1808 (Treasury No. 2631) observes “that the original seizure in this case appears not only “to have been justifiable by the Court having ordered further “proof, but to have been necessary as a matter of duty by the “Court having decreed to the captors the payment of their “expenses. The sentence of restitution in this case had passed “but had not been carried into effect. By the seizure however “of this property under suspicion of its belonging to the enemy “before the laying on of the Prussian embargo and not by a “detention in consequence of that measure, the property “remained in this country and has been acquired to the Crown. “The captors have certainly been the cause of that acquisition, “and probably may be thought entitled to remuneration, but “whether to the same extent as those captors, who have “detained vessels after the embargo under the authority of the “orders of Government or to what extent seems to be a matter “for the consideration and decision of your Lordships, and it “seems fit to apprise your Lordships that the question will “apply to a great number of cases both of Prussian and Danish “property. The present case is in one respect of a favourable “class of those detained before the embargo, namely, that no “blame whatever is imputable to the captor either in the “original seizure or in the course of adjudication.” Under these circumstances their Lordships gave one-eighth of the proceeds, but on what grounds this proportion was fixed does not appear.

Here then were two cases of capture before embargo, the one by a King’s ship, the other by a Revenue cruiser, and where the property had been decreed to be restored, and had therefore passed out of the legal custody of the captors, and in which the Crown had thought fit to grant a proportion of the proceeds, namely, one-fourth to a King’s ship and one-eighth to a Revenue cruiser. But whatever may have been their Lordships’ intentions at that time in regard to such cases, it is certain that they soon afterwards had reason to alter their views in this respect, for in the very next case of the kind which came before them they refused to make any grant to the captors. The case to which I refer is that of the “*Evadne*,” captured on the 26th of February 1806 by His Majesty’s hired armed brig “*Colpoys*” on the ground that she was carrying enemy’s property and was engaged on an illegal voyage. On the 28th of March following the ship was decreed to be released as being the property of a Prussian subject; but on the 5th of April following, and before the vessel had left this country, an embargo was laid on



Prussian vessels and goods, and hostilities having subsequently ensued the ship was condemned to the Crown as being Prussian property taken "prior to a declaration of hostilities against Prussia." The captors by whom she had originally been brought into port, and which had ultimately led to her condemnation to the Crown, thought, on the authority of the case of the "*Hoffnung*," that they were entitled to a proportion of the proceeds, and accordingly memorialized the Treasury on the subject. The memorial was referred in the usual way to the King's Proctor, who, in his report dated the 6th February 1809 (Treasury No. 1411), observed "that this vessel having "been restored upon the capture made by His Majesty's "brig '*Colpoys*' before Prussian hostilities, and the condemnation to the Crown being upon a new detention on "the breaking out of the war with Prussia, whether any reward "is due to the first captor is submitted to your Lordships' "consideration." The minute of their Lordships upon this report, and which bears date the 28th of February 1809, is as follows:—"Write to the parties acquainting them that this "vessel having been restored upon the capture made by the " '*Colpoys*' before Prussian hostilities, and the condemnation "to the Crown being upon a new detention, my Lords cannot "recommend it to His Majesty to grant any part of the proceeds "to the officers and crew of the '*Colpoys*.'

The same course was adopted in the case of the Hansborough ship "*Akerman*," which was captured on the 27th of October 1805 on suspicion of her having enemies' property on board. Some portions of the cargo were claimed as Prussian property, and the claim having been duly established they were ordered by the Court to be restored, this country being then at peace with Prussia. Before, however, the goods could be removed from this country an embargo was placed on Prussian property; and they were accordingly re-seized and ultimately, on the breaking out of hostilities, were condemned as *droits* to the Crown. The original captors presented a memorial praying for a proportion of the proceeds, but the King's Proctor in his report thereon, dated the 12th November 1810 (Treasury No. 12,879), observed "that on inspecting the proceedings it "appears that the goods, which are the subject of this "memorial, had been restored by decree of the Court, and "were afterwards made the subject of proceedings on behalf "of His Majesty. In such cases it has not been usual to grant "any remuneration to the original captors. It will therefore "not be advisable to comply with the prayer of the memorial." And accordingly no grant was made to the captors.

Thus, then, was the principle which had been adopted in the cases of the "*Hoffnung*" and the "*Herstelling*" set aside, and I can find no case after those two in which any grant was ever made to the captors for a capture effected before embargo, and in which the property had been decreed to be restored prior to the issue of the embargo.

*Subsection 13: Where the Prize was in possession of Captors at the time of the issue of the Embargo.*

It now becomes our duty to consider what was the course adopted in regard to captures made before embargo, and which were under adjudication and in the legal custody of the captors at the time of the issue of the embargo.

We have already seen that up to and including the Spanish war of 1805 no distinction was made between cases of this description and captures made in pursuance of an embargo, the same proportions were granted in both cases. It would seem also that even in the Prussian war it was first intended to make no distinction in regard to ships of the Royal Navy between captures before and captures after embargo so long as the property was in the captor's legal possession at the time of the issue of the embargo. For amongst the earlier grants of this description we find two-thirds of the proceeds the usual proportion granted to King's ships, as if the capture had been made in pursuance of the embargo. Thus, in the case of the "Gute Mutter Suse" (Warrant No. 270), captured on the 4th of April 1806, the day before the embargo, two-thirds of the proceeds were, on the 15th February 1808, granted to the captors. Again, in the case of the Prussian prize "Reyhersteig" (Warrant No. 311), captured so early as the 30th of October 1805 by H.M.'s cutter "Princess of Wales," two-thirds of the proceeds were, on the 22nd of June 1808, granted to the captors. Also in the case of the Prussian vessel "Algemeen Belang" and her cargo (Warrant No. 325), captured on the 4th of April 1805, nine-tenths of the proceeds were, on the 1st of July 1808, granted to the captors, the same amounting to only 284*l.* 11*s.*

In all these cases, however, ships of the Royal Navy were the captors, nor do we find any case at this period, or, indeed, for a very considerable time afterwards, of any grant being made to a privateer or other vessel than a ship of the Royal Navy for a capture before the issue of an embargo. This is probably owing to the decision which had been come to by the Treasury on this subject, as expressed in their letter of the 4th of April 1808 to the King's Proctor, to which reference has been already made.\*

Towards the end of the year 1808, however, it seems to have been thought that, even in the case of ships of the Royal Navy, where the property had been captured prior to embargo, the same proportion ought not to be granted as when the capture had been effected under the embargo or in pursuance of the orders of His Majesty's Government, even though the property may have been under adjudication and in the actual possession of the captors at the time of the issue of the embargo.

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\* See page 71.

The first cases, in which this distinction appears to have been made, were the "Elenora Charlotta" and "Sophia Amelia" (Warrants Nos. 377 and 390). The circumstances of these cases were as follows :—

The "Elenora Charlotta" was a Rostock vessel, and had been captured on the 15th of March 1805 by H.M.'s gun brig "Bold" and H.M.'s sloop "Cruizer"; the "Sophia Amelia" was a Danish vessel and had been captured on the 3rd of September in the same year by H.M.'s sloop "Cruizer" and the armed cutter "Active." Both vessels had been seized on the suspicion of their having enemies' property on board and of being engaged on an illegal voyage. Proceedings having been commenced against them in the Court of Admiralty, both the ships were restored, but some doubts being entertained as to the ownership of the cargoes, which had been claimed as Prussian property, the question in regard thereto was reserved. Ultimately these doubts were removed, and the cargoes would as a matter of course have been restored to their owners, but in the meantime war had broken out with Prussia. The result of which was that they were "condemned as prize to His Majesty, being Prussian property taken prior to hostilities."

Memorials were in the usual way presented by the captors for a proportion of the proceeds, and having been referred to the King's Proctor, that officer in his reports dated the 28th October 1808 (Treasury Nos. 11,445 and 11,446) observes of each of these vessels that it "was captured long before any "order issued for the detention of Prussian property. It was "detained on suspicion of being enemies' property and engaged "in an illegal voyage; these suspicions being removed by "evidence produced by the Prussian claimants, the property "was condemned to the Crown in consequence of hostilities "taking place with Prussia during the dependence of the "proceedings.

"What may be the intention of His Majesty's Government "in respect to the rewarding of captors out of property so "condemned His Majesty's Advocate is not fully informed. It "is proper to state that in former instances no distinction was "made whether the property was seized before or after orders "had been issued by Government for embargo and detention. "The property was considered as acquired to the Crown by the "act of the captors, and they accordingly received their reward, "generally two-thirds of the net proceeds.

"Whether inconveniences may not have arisen from pursuing this course by inducing cruisers upon speculation, especially in the recent fluctuating state of Europe, to make seizures, to delay restitution, and to interpose vexatious appeals, so as to render it expedient to alter the rule; whether the alteration should only take place in respect to captures by privateers on a presumption (supported, His Majesty's Advocate believes, pretty strongly by the fact) that the above species of

misconduct cannot be imputed to the commanders of His Majesty's ships, or whether in captures by King's ships some portion though a smaller one might not be granted, if the original capture was justifiable, and no vexatious proceedings were imputable, are considerations of public policy, upon which His Majesty's Advocate can hardly presume to offer an opinion.

"In the case of the 'Hoffnung,' Huisman, where the capture took place before the Prussian embargo, one-fourth has been granted to the King's ship; but in the case it is to be observed that the property was absolutely restored and out of possession of the captor before the embargo, though his original seizure was the cause of acquiring the property to the Crown.

"In the present case, as in that of the 'Hoffnung,' the original seizure was perfectly justifiable, the case was at last not wholly freed from suspicion of fraud, and there has been no appearance of any vexatious proceeding imputable to the captor, and it has the advantage of the case of the 'Hoffnung' in the circumstance that the restitution had not been passed, and the property therefore had not gone out of the captor's possession before the embargo took place.

"His Majesty's Advocate has thus endeavoured as shortly as possible to give some general idea of the subject for your Lordships' consideration. The subject will be of great extent in the Prussian and Danish cases, and it would be highly desirable that some distinct principles should be laid down for governing grants to captors in those cases."

It would seem from a pencil note at the foot of the report in the case of the "Elenora Charlotta" that it was at one time contemplated by their Lordships to grant to the captors the usual proportion of two-thirds of the proceeds, but on the reports being read at the Board on the 6th of December 1808 a minute was made in the following words:—"Under the circumstances attending these cases, my Lords are pleased to direct warrants to be prepared for one-fourth of the net proceeds of the vessels in question."

And accordingly warrants were on the 30th day of December 1808, in the case of the "Eleonora Charlotta" (No. 377), and on the 8th day of February 1809, in the case of the "Sophia Amelia" (No. 390), issued, granted one quarter of the proceeds to the captors.

The principle, which had thus been adopted in the cases of the "Eleonora Charlotta" and the "Sophia Amelia," to grant to the captors one-fourth of the proceeds of any prize remaining under adjudication at the time of the issue of the embargo, when the capturing vessel was a King's ship, appears from that time to have been followed in all similar cases.

Thus on the 4th of May 1809 we find two Warrants (Nos. 413 and 414) issued granting to the captors one-fourth of the



proceeds of the Prussian prizes "Die Stadt Norden" and "George Ludwig" captured on the 18th and 2nd March 1806 respectively.

On the 16th of August 1809 a Warrant (No. 433) granting one-fourth of the proceeds of the Prussian prize "Fortuna" captured in March 1806 to H.M.'s gun brig "Blazer."

On the 5th of October 1809, a warrant (No. 440) granting one-fourth of the proceeds of the Prussian prize "Sophia" captured on the 9th of June 1805.

On the 21st of December 1809 a Warrant (No. 452) granting one-fourth of the proceeds of the Prussian prize "Trende Sostre" captured on the 13th September 1805.

On the 14th of February 1810 a Warrant (No. 468) granting one-fourth of the proceeds of the Prussian prize "Vrouw Cornelia."

On the 5th of June 1810 two Warrants (Nos. 537 and 539) granting one-fourth of the proceeds of the Danish prizes "Enigheden" and "Jubel Aaret" to the captors.

And on the 21st of August 1810 a Warrant (No. 585) granting one-fourth of the proceeds of the two Danish prizes "Johanna Frederica" and "Rachel Elizabeth" to the respective captors.

In all the preceding cases ships of the Royal Navy were the captors, and the principles upon which the Government acted at this period in cases of this description are so clearly laid down in one of the cases just cited, that of the "Johanna Frederica," that I cannot do better than state the circumstances.

The "Johanna Frederica" was a Danish vessel, which had been captured on the 17th of July 1807 by H.M.S. "Spider" on the ground of her being engaged on an illegal voyage, this country being then at peace with Denmark. She was taken to Malta and a claim having been given for the ship as Danish property, it was on the 31st of August 1807 decreed to be restored. Before, however, the vessel had taken her departure from Malta, news arrived that an embargo had been laid on all Danish property, and accordingly the vessel was re-seized on behalf of the Crown, and was ultimately condemned to the Crown as Danish property captured before hostilities. A memorial was presented by the original captors praying for a proportion of the proceeds, and in the King's Proctor's report thereon, dated the 26th of June 1810 (Treasury No. 7251), it is said that, "if the vessel was to be considered as having passed absolutely by restitution out of the custody of the captors before the Danish embargo, a subsequent seizure on behalf of His Majesty would not entitle the original captors to any remuneration out of the proceeds agreeable to what has been done in the "Evadne" (6th February 1809) and in other cases. But in this case the restitution did not pass till the 31st of August 1807, subsequent to the order issued to H.M.'s ships for the detention of Danish vessels. It is humbly submitted to your Lordships therefore whether this circum-

“ stance may not be accepted as creating a distinction from  
 “ ordinary cases, and as raising a sort of equitable claim in  
 “ favour of the captor to be allowed the benefit of the order of  
 “ detention of the 25th of August, although it could not  
 “ be known at Malta at the time of restitution. As the  
 “ detention was ultimately renewed by the agent of the receiver  
 “ of droits at Malta, who would not have any claim to remuneration out of the proceeds, there seems to be no third interest  
 “ opposed to this favourable interpretation, if your Lordships  
 “ should think it reasonable under all the circumstances of the  
 “ case. In that event one-fourth of the net proceeds of the  
 “ ship and freight will be a fit remuneration to the captors.”

Upon this statement of facts the Warrant No. 585 was issued granting one-fourth of the proceeds to the captors.

Numerous other cases might be cited from the accompanying register, were it necessary ; but it will be sufficient here to say that from this time the uniform practice, in regard to property captured by King's ships prior to embargo, was this : if the property had been released before the issue of the embargo, then the original captors got nothing ; if, on the other hand, it was still under adjudication and therefore in the legal custody of the captors at the time, they got one-fourth of the proceeds. It must, however, be distinctly remembered that this rule applied only to captures by King's ships, not to captures by privateers or other vessels.

#### *Subsection 14 : Capture by Privateers before Embargo.*

Let us now proceed to ascertain what was the course adopted by the Government in regard to captures by privateers before the issue of an embargo.

We have seen the decision, to which their Lordships had come at the commencement of 1808, as expressed in their letter of the 4th of April of that year to the King's Proctor, we have also seen that in one case, that of the Prussian vessel “Herstelling” (Warrant No. 309) the stringency of the rule then laid down had been relaxed by a grant of one-eighth of the proceeds to the Revenue cutter “Hunter,” although the prize had actually been released prior to the issue of the embargo against Prussia. It would seem, however, that after this case the resolution not to grant to privateers, Revenue cruisers, or other non-commissioned vessels any portion of the proceeds of the prizes which they might take prior to the issue of any embargo was for a very considerable time most strictly adhered to, for about a year after the “Herstelling,” no grant would seem to have been made in any case of that description ; although during the same period grants to King's ships for captures made before embargo, where the prize was under adjudication at the issue of the embargo, were, as we have seen, by no means infrequent.

The first instance of a relaxation of this rule as against privateers, so far as I have been able to discover, occurred on the 3rd of May 1809, in the case of the "De Jonge Onne Pieters Breuwer" (Warrant No. 410). This was the case of a Prussian vessel captured by the privateer "Lord Nelson" on the 7th of July 1805, on suspicion that she was bound to Flushing and had enemies' goods on board. The ship and cargo were claimed as Prussian property, and were as such decreed by the Court of Admiralty to be restored. From this decree an appeal was prosecuted and pending the appeal hostilities were declared against Prussia. Upon which the captors abandoned their appeal and consented to the property being condemned as droits to the Crown. A memorial was then presented by the captors for a portion of the proceeds, and the King's Proctor in his report of the 24th of March 1809 (Treasury No. 3290) observed "that the vessel and cargo having been detained long before any prospect of hostilities with Prussia, restored by the High Court of Admiralty, and an appeal from that sentence having been entered and prosecuted, it was in consequence of that appeal that the property had been detained in this country. The original seizure was perfectly justifiable, the case was extremely suspicious, and though finally a decree of restitution took place, yet His Majesty's Advocate cannot undertake to say that the appeal was vexatious, and that the circumstances of the case did not fairly warrant the submitting it to the decision of the supreme tribunal, notwithstanding the captors upon the breaking out of Prussian hostilities abandoned the appeal rather than contest the question with the Crown, and probably in the expectation of obtaining a grant of a portion from the Crown. But whether in any case, where property has been detained merely by an appeal, and considering the difficulty of saying in any case upon an *ex parte* view of it whether the appeal was or was not vexatious, it may be fit to grant any and what reward to captors is submitted to your Lordships' consideration."

Whether this case underwent much consideration cannot now be ascertained; the only minute which was made upon the case by their Lordships bears date the 30th of March 1809, and was in the following words:—"Under the circumstances of the case my Lords are pleased to direct a warrant to be prepared for one-fourth of the net proceeds of the cargo in question." And accordingly the warrant (No. 410) for that proportion was issued on the 3rd of May 1809.

This case, however, of the "De Jonge Onne Pieters Breuwer" was, as we shall find, altogether exceptional, for there is not, I believe, another instance of a grant being made to a privateer or to any other vessel, but a King's ship, of one-fourth of the proceeds under any circumstances whatever.

Notwithstanding this case, however, the decision, which had been come to by their Lordships in the beginning of 1808 in

regard to captures by privateers before embargo appears to have been still strictly adhered to; and we find that in a very important case, which came before their Lordships so late as July 1810, when the question as to the day from which the Danish embargo was to date was most fully considered, the same principle was again declared, namely, that "no reward should be granted to privateers in any case of capture before embargo."

The case to which I refer is that of the "Redeligheden" (Warrant 565), a Danish ship captured on the 29th of August 1807 by the privateers "Lord Cochrane" and "Retribution," and as the whole question of captures by privateers before and after embargo was most fully discussed in that case, I propose to quote it at some length.

I should first observe that the order of embargo against Denmark bore date the 2nd day of September 1807, and this vessel having been captured on the 29th of August, a few days before the date of the embargo, the question arose as to whether the captors should or should not receive a grant out of the proceeds, the vessel having on the breaking out of the war with Denmark on the 4th of November following been condemned as droits to the Crown. A memorial was presented by the captors, which was referred in the usual way to the King's Proctor, and in his report of the 13th of June 1810 (Treasury No. 6732) he observed, "that this is one of several captures made by privateers prior to Danish hostilities or to any public order for the detention of Danish property, with respect to which it is necessary to request your Lordships' special directions. On former occasions no distinction has been observed with regard to privateers. They have been rewarded in their usual proportion out of all property, which they have been the means of detaining, on the same footing as H.M.'s ships. This indulgence has been shown to them, it may be presumed, on a view of the policy of encouraging this description of force generally, and of the justice of not excluding them from the benefit of early seizure at the commencement of hostilities, where no abuse was apprehended. But the long continuance of hostilities and the peculiar circumstances attending successive hostilities had given rise to many abuses, and about the time of the Danish hostilities it is understood H.M.'s Government found it necessary to alter the view before taken of the propriety of rewarding privateers indiscriminately and it was deemed expedient to repress rather than to reward a spirit of speculation on approaching hostilities before any act of the Government had expressly or by strong implication warranted such seizures. In cases of restitutions vexatiously delayed by appeal or of seizures manifestly unjustifiable, no doubt can be entertained respecting the application of the rule, but it will be proper that your Lordships should determine whether it is to be absolute in all cases, and to be



“ applied invariably to seizures before the declaration of  
 “ embargo. The commencement of Danish hostilities was  
 “ preceded by some circumstances of a peculiar nature. The  
 “ sailing of the Baltic Expedition (26th July), the declaration  
 “ of hostilities on the part of Denmark, which have been  
 “ ascertained from public documents to have been as early as  
 “ the 16th of August, and with reference to the termination of  
 “ Mr. Jackson’s mission on the 13th, and the order issued  
 “ to His Majesty’s ships to detain Danish vessels (25th August)  
 “ were events of a public nature more or less known  
 “ to individuals, and affording reasonable grounds of con-  
 “ jecture as to the probable result. There would be enough  
 “ in these circumstances to remove the imputation of rash  
 “ and vexatious speculation, and in that respect would take  
 “ these cases out of the reasons by which His Majesty’s  
 “ Government is understood to have been induced to discourage  
 “ speculative captures on the part of privateers. In captures  
 “ made almost on the eve of the embargo there would be an  
 “ apparent hardship in refusing to grant any participation of  
 “ prize interest resulting to the Crown from such seizures in  
 “ conformity to former practice, and unless it is the intention  
 “ of His Majesty’s Government to discourage absolutely all  
 “ seizures by privateers prior to the declaration of an embargo,  
 “ it would not be consistent with the line of duty prescribed  
 “ to them to withhold such reward altogether. If, on the other  
 “ hand, His Majesty’s Government should be of opinion that  
 “ the danger of abuse is greater than the prospect of public  
 “ benefit from such exertions, or if in deferring the notifi-  
 “ cation of embargo it is intended that individuals should be  
 “ restrained absolutely to that declaration in exercising acts  
 “ of hostility, whatever the apparent hardship may be, there  
 “ will be no injustice in refusing to grant any reward in  
 “ seizures so made, and much difficulty of ascertaining the  
 “ merits or demerits of particular cases will undoubtedly be  
 “ obviated by the universality of the rule. The cases subject  
 “ to the remarks above stated for your Lordship’s consider-  
 “ ation may be divided into three classes, viz., those captured  
 “ between the 25th August and 2nd September, those between  
 “ the date of the Danish Declaration” (16th August) and the  
 “ Order of the 25th of August, and those between the sailing  
 “ of the Baltic Fleet” (26th July) “and the Danish Declara-  
 “ tion. This is a case of the first class, captured on the  
 “ 29th of August, and independent of the considerations above  
 “ suggested appears to be one of an ordinary kind, in which  
 “ one-half would be recommended as a proper reward to the  
 “ owners, officers, and crew of the ‘Lord Cochrane’ and  
 “ ‘Resolution’ privateers, the captors, agreeably to what has  
 “ been done in former cases.”

The whole subject appears now to have been most fully  
 considered by their Lordships, and on the 13th of July 1810

there was a minute of their Lordship's Board on this case in the following terms: "Read letter of this Board to the King's  
 " Proctor of the 4th April 1808 expressing to him their  
 " Lordships' opinions that, in order to discourage as much as  
 " possible the vexatious and unwarrantable measures which  
 " had been resorted to by privateers in the capture and  
 " detention of vessels belonging to States in amity with His  
 " Majesty, it would be proper in respect of property captured  
 " by privateers belonging to the subjects of any States which  
 " at the time of the detention is in amity with His Majesty,  
 " and before any order for detaining such property by embargo  
 " or otherwise should have been issued by His Majesty, which  
 " property should in consequence of subsequent hostilities be  
 " condemned as prize to His Majesty, that no part of the  
 " proceeds of the property so captured should be granted to  
 " the captors and owners of such privateers, unless some very  
 " special circumstances should appear to entitle them to  
 " reward. My Lords are of opinion that it may be expedient,  
 " with reference to the intention expressed in the said letter to  
 " the King's Proctor to consider the 16th August, the date of  
 " the Danish declaration of hostilities, as the period to which  
 " captures of Danish vessels and property by privateers should  
 " have reference with respect to the question of reward, and  
 " that in all cases of capture of Danish property on or subse-  
 " quent to that day the usual reward should be granted, but  
 " that no reward should be granted in any case of capture  
 " before that period. Write to the King's Proctor accordingly  
 " for the information of His Majesty's Advocate as to the  
 " principle which should govern all cases of this description."  
 Accordingly a warrant (No. 565) was on the 1st day of August 1810 issued granting one moiety of the proceeds to the captors.

Thus then was the 16th day of August 1807 fixed as the day from which the Danish embargo was to date. All captures made subsequent to that date would entitle the captors to the usual proportions out of the proceeds, but no grant was to be made to a privateer or other vessel of that class for any capture effected before that date.

At the end, however, of the year 1810 or the beginning of 1811 there would seem to have been a disposition to relax in some degree the stringency of the rule which had been laid down in regard to these captures by privateers before embargo.

At that time it had become the general practice, as we have seen, to grant to ships of the Royal Navy one-fourth of the proceeds in all cases in which the capture had been effected before embargo, and where the property was under adjudication and in the possession of the captors at the time of the issue of the embargo; and as it was also an admitted principle that privateers and others should take somewhat less than King's ships, it seems to have been decided that one-fifth of the proceeds would be a proper reward to be granted to privateers in similar cases, but

only where the property was under adjudication and in the actual possession of the captors at the time of the embargo being issued, and where the original capture had been made on justifiable grounds, and the property did not appear to have been vexatiously or improperly detained before the Court.

It is not unlikely that the decision, which would seem to have been then come to, to grant one-fifth of the proceeds to privateers in this class of cases, is expressed in some formal minute of their Lordships, but if so, I have not been able to discover it, nor am I able to say whether it was adopted on the recommendation of the King's Advocate and a report from the King's Proctor, or not. Suffice it, however, to say that such a rule was laid down, as I think that I shall have no difficulty in showing.

From the 3rd of May 1809, when the warrant issued granting one-fourth of the proceeds of the "*De Jonge Onne Pieters Breuwer*" to the captors, no grant had been made to any privateer or to any other vessel than a King's ship for any capture effected before embargo.

The first case after this time which we meet with is that of the "*Hoop*," a Prussian vessel which had been captured on the 16th of March 1806 by the privateer "*Betsey*," and in which a grant (No. 625) of one-fifth was on the 4th of March 1811 made to the captors. The "*Hoop*," it appears, was laden with a cargo of Spanish wool, and this country being then at war with Spain she was detained by the "*Betsey*" on suspicion of the cargo being enemies' property. She was taken to Falmouth and proceedings were commenced against the prize in the High Court of Admiralty, but pending the adjudication an embargo was laid upon Prussian property, and war having been subsequently declared the ship and freight were condemned as Prussian property captured before hostilities. On a memorial being presented by the captors for a proportion of the proceeds, the King's Proctor in his report of the 8th of December 1810 (Treasury No. 13,948) expressed himself thus: "and having laid the said memorial before His Majesty's Advocate General and attended and consulted with him on the subject, I do under his advice most humbly report to your Lordships that a grant of one-fifth of the net proceeds will be a fit reward to the captors conformably to what has been done in other cases of antecedent captures." Whether by the words "other cases of antecedent captures" he meant other cases in which privateers had been the captors, or only other cases in which King's ships had been the captors, it is impossible now to say, but so far as I have been able to ascertain this is the first instance of a grant of this kind.

Cases, however, of this description soon became very frequent. The two next, to which I will call your attention, arose out of the Danish hostilities, they are those of the



“Fortuna” and “Trende Sodskende” (Warrant No. 633). The circumstances of those cases are as follow :—

The Danish ship “Fortuna” had been captured on the 13th day of July 1807 on suspicion of her having enemies’ property on board, and a claim having been given for the ship as Danish property it was, on the 27th of the same month, restored and probably left at once, this country being then on the eve of a war with Denmark. The question, however, as to the cargo was reserved, and it was not until the 18th of December 1807 that it was finally adjudged to be enemies’ property, and was accordingly condemned as lawful prize to the captors on payment of freight. War having, however, by that time been declared against Denmark, the freight, which was in the cargo, but which belonged to the Danish owner of the ship, was condemned to the Crown as Danish property captured before hostilities.\* On a memorial being then presented by the captors for a portion of the freight, which had been condemned as droits to the Crown, the King’s Proctor, in his report, dated the 23rd of October 1810 (Treasury No. 12,127), observed, “that a grant of one-fifth of the freight will be a fit remuneration to be granted to the captors agreeably to the proportion that has been observed in other cases of antecedent captures on grounds unconnected with Danish hostilities.” And accordingly a grant of one-fifth of the freight was, on the 26th of March 1811, made to the captors.

The other case, the “Trende Sodskende,” illustrates more fully the principle upon which H.M.’s Government proceeded at that time in cases of this description. This vessel had been captured on the 14th of July 1807 by the privateer “Polecat” whilst on a voyage from Bordeaux to Tonningen, on suspicion of her having enemies’ goods on board. The vessel having been claimed as Danish property was decreed to be restored, this country being then at peace with Denmark, but the adjudication of the cargo was allowed to stand over. The vessel, however, though decreed to be restored, had not left the country when an embargo was placed upon Danish property, and she was accordingly re-seized and ultimately condemned to the Crown as Danish property captured before hostilities. The cargo, however, was subsequently condemned to the captors as enemies’ property, but the freight thereon, which belonged to the owner of the ship, who was a Dane, was condemned to the Crown as Danish property captured before hostilities. On a memorial being presented by the captors for a grant out of the proceeds of the ship and freight, both of which had been condemned as droits of the Crown, the King’s Proctor, in his report of the 19th December 1810 (Treasury No. 14,355), observed, “that as the ship had been restored and afterwards re-seized to His Majesty’s use, the

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\* The “Fortuna,” Edwards, 56, 2 E.P.C. 17.



“ original captors will not be entitled to any proportion of the proceeds agreeably to the rule which has been observed in similar cases. But as the freight was not dependent on the ship, but was a thing reserved in judgment on the goods ultimately condemned to the memorialists; they seem to be entitled to the same remuneration out of those proceeds as would have been allowed to them under His Majesty’s bounty out of a ship or cargo detained in judgment on antecedent cause of seizure and afterwards condemned to His Majesty under the embargo. In this view it will be proper to grant one-fifth of the freight agreeably to the proportion recommended for privateers on similar occasions.”

The next case to which I will call your attention, that of the “*Nayde*” (Warrant No. 629), is a very important one, and was frequently referred to in the discussions which afterwards occurred between the Government and owners of privateers on the proportion proper to be granted in cases of this description. It shows, too, so clearly the principles upon which the Government acted at this time that I must quote it at some length. The “*Nayde*,” a Danish ship, was captured on the 23rd of August 1807 whilst on a voyage from Pernau, a Russian port, to Oporto. A large portion of the cargo was claimed as Portuguese property, this country being then at peace with Portugal; but a part of it remained unclaimed. Subsequently, the ship was condemned to the Crown as Danish property captured before the declaration of war against that country, and the unclaimed part of the cargo, being presumed to be Russian property as having been shipped from a Russian port, was likewise condemned to the Crown as Russian property captured prior to hostilities, war having been declared against that country on the 18th of December 1807, and pending the adjudication of the case.

On a memorial being presented by the captors for a grant, the King’s Proctor in his report dated the 19th of December 1810 (Treasury No. 14,353) observes that one moiety of the proceeds of the ship should be granted to the captors, the vessel being Danish property, and having been captured subsequent to the 16th of August 1807, “and as to the cargo that, as the part pronounced to be Russian property has been condemned to His Majesty in consequence of subsequent hostilities, if your Lordships should see no reason to withhold the same remuneration in Russian captures which has been granted in others, as no general declaration of your Lordships’ pleasure has yet been expressed, one-fifth of the proceeds of the Russian goods detained, as on an antecedent but justifiable cause of capture, will be a fit proportion to be granted to the memorialists agreeably to what has been recommended in similar cases.” And accordingly a warrant (No. 629) was on the 12th of March 1811 issued granting one-half of the ship and one-fifth of the cargo to the captors.

Cases of this description now became numerous. One was the "Haabets Anker" (Warrant No. 638), a Danish ship captured by the privateer "Lively" on the 24th of August 1806, about a year before the issue of the embargo against Denmark. The ship was claimed as Danish property and was restored, but strong suspicions appearing to attach to the cargo, further proof was ordered.

The question as to the ownership of the cargo was not disposed of until the 4th of June 1808, when it was shown to have belonged to a Danish subject.

In the meantime, however, this country had declared war against Denmark, and accordingly the cargo was condemned to the Crown as Danish property captured before hostilities. A memorial was presented by the captors, and the King's Proctor in his report thereon, dated 31st December 1810 (Treasury No. 84), observed, "that a grant of one-fifth of the net proceeds of the cargo will be a fit reward to the captors agreeably to the proportion usually allotted to privateers in antecedent captures, wherein the property was depending in judgment at the announcement of hostilities and devolved to His Majesty in that form."

There is also the case of the "Minerva" (Warrant No. 640), a vessel under Swedish colours, which was captured on the 21st November 1805 by the privateer "Betsey" on suspicion that both ship and cargo were French property. At the hearing of the cause on the 22nd day of July 1806 part of the cargo was proved to be Prussian property, and war having by that time been declared against Prussia, it was condemned to the Crown as Prussian property seized prior to hostilities. In the King's Proctor's report on this case, dated the 10th December 1810 (Treasury No. 13,977), he observes, "that it appears from the proceedings that there is no reason to impute improper motives to the captors in keeping this property before the Court. That it will be advisable therefore to grant one-fifth of the net proceeds as a fit reward to the captors conformably to what has been done in other cases under similar circumstances."

In the case of the Danish vessel "Leo" (Warrant No. 677), captured on the 6th of July 1807 by the privateer "Betsey" for an alleged breach of blockade, acquitted of that charge but afterwards condemned to the Crown as Danish property seized prior to hostilities, the King's Proctor in his report of the 13th of May 1811 (Treasury No. 5438) observed, "that a grant of one-fifth of the aforesaid net proceeds will be a fit reward to the captors agreeably to what has been done in similar cases of antecedent captures, not appearing to have been vexatiously or improperly detained."

Many cases occur after this of grants of one-fifth of the proceeds to the captors. And on the 21st of January 1812 we find a warrant (No. 727) issued granting to the privateers "Lord Cochrane," "Lion," and "Mars" one-fifth of the proceeds in ten

Danish cases, where the captures had been effected before the 16th of August 1807, and one-half where it had taken place subsequent to that date.

It would seem, however, that the grant of even one-fifth of the proceeds was not given, unless the original capture—had been made upon justifiable grounds. This is apparent from the case of the “*Neptunus*,” which was a Danish vessel captured on the 14th day of August 1807 by the privateers “*Busy*” and “*Betsy*.” The vessel and the greater part of the cargo, having been proved to be Danish property, were on the breaking out of hostilities with Denmark condemned to the Crown as *droits*. On a memorial being presented by the captors for a portion of the proceeds to be granted to them, the King’s Proctor, in his report dated the 12th November 1811 (Treasury No. 13,265), observed “that this was a capture by a privateer on the 14th of August 1807 of a Danish merchant vessel bound on a voyage from St. Croix to a port in Denmark. In such a case it is scarcely possible to suggest any lawful cause of seizure independent of the expectation of approaching hostilities with Denmark. Under these circumstances it comes precisely under your Lordships’ order signified in Mr. Harrison’s letter of the 24th of July 1810, which fixes the 16th of August 1807 as the period to which captures of Danish property by privateers should have reference with respect to the question of reward, and directs that rewards shall not be granted in cases of capture before that period. It will, therefore, not be advisable to comply with the prayer of the petition.” And a letter was accordingly written to the parties acquainting them that my Lords could not comply with their request.

The determination thus come to by their Lordships to grant only one-fifth of the proceeds of all captures made by privateers previous to an order of embargo, and then only in case the original detention should have been made on justifiable grounds, and the property be still at the time of the embargo issuing in the legal custody of the captors, naturally excited a feeling of strong dissatisfaction amongst the owners of privateers throughout the Kingdom, the more so as they had formerly been accustomed to receive on such captures the same proportions as if made in pursuance of an embargo.

The person who appears to have been most affected by the operation of this measure was a Mr. John Teed, of Plymouth, a gentleman who was largely interested in the equipment of privateers from that port. And the correspondence which ensued on the subject between that gentleman and the Treasury, and which I accidentally discovered in searching the Treasury records, is highly interesting, and has afforded me much information in regard to the present enquiry. The documents to which I allude are the following:—No. 6611, 6850, 6851, and 6852 of 1813; also No. 563 of 1814; No. 13,666 of 1815;



No. 6314 of 1820; and No. 13,164 of 1824. I can, of course, but give a brief summary of them, but they may be referred to in original should that be deemed necessary.

It would seem from Mr. Teed's letters that up to the year 1805 hardly any privateers had been fitted out from this country against the States, with which we were then at war, namely, the French and Batavian Republics. The French flag has almost entirely disappeared from the sea, but the commerce of that country still continued to flourish under the neutral flag, the commanders of H.M.'s ships fearing to detain neutral vessels, lest they should be condemned in costs and damages. Accordingly, Mr. John Teed, a merchant of Plymouth, fitted out a privateer called the "Lord Nelson," and despatched her from this country about the latter end of May 1805. Encouraged by the success which attended his first essay, he subsequently fitted out the privateers "Vengeance," "Lion," "Trafalgar," "Lord Cochrane," and "Mars," and so successfully did they cruise against the enemy that at the commencement of hostilities against Denmark in November 1807, they had, according to a letter of Mr. Teed, dated the 20th October 1815 (Treasury No. 10,724), detained and brought into port no less than 40 ships under the Danish flag, bound to or from a French port. These vessels were subsequently condemned to the Crown as Danish property captured prior to the declaration of hostilities. On all the captures which had been thus effected on or subsequently to the 16th of August 1807, the usual proportions of the proceeds were granted, namely, one-half above 300*l.*, and four-fifths under 300*l.* But on all those captures effected before the 16th of August 1807, only one-fifth of the proceeds were given to the captors, and then only when the original seizure had been justifiable, and the property was depending in judgment at the time of the order of embargo issuing.

It would seem that Mr. Teed was very much dissatisfied with the small apportionment which had been made to him out of the captures effected by his privateers prior to the 16th of August 1807, and he accordingly on the 20th of February 1813 forwarded memorials for an increased remuneration in all these cases, he claimed one moiety of the proceeds not only in those cases in which the property was under adjudication at the time when the embargo issued, and where only one-fifth of the proceeds had been granted, but also in those cases, in which the property had actually been restored to the claimants prior to the embargo, and where no grant whatever had been made to the original captors. He claimed it on these grounds:—

- (1) Because his privateers, in having originally captured and brought these vessels into port, had been directly instrumental in procuring their ultimate condemnation to the Crown as droits;
- (2) Because several of the vessels, which may have been decreed by the Court to be released prior to the issue



of the order of embargo, were actually at that time in the possession of the captors the question as to the cargoes being still under adjudication ;

- (3) Because King's ships were entitled to share in captures effected by them in ports on the issue of an order of embargo, and therefore privateers ought equally to be entitled ;
- (4) Because no distinction of the kind had ever been made until the time of the Danish embargo, privateers having previously thereto been entitled to one-half and even two-thirds of such captures.

And Mr. Teed also observed that only one-fifth, the lowest proportion, had been given, even where the proceeds were less than 300*l*.

These memorials, having been referred to the King's Proctor, he observed in his reports thereon of the 12th and 15th days of May 1813 (Treasury Nos. 6611, 6850, 6851, and 6852)—

- (1) That the proportions awarded in these cases were the same as those which had been fixed by their Lordships for all similar cases ;
- (2) That, although the vessels might have been actually in the custody of the captors by an arrangement with the masters, or owners of the cargoes, yet that such custody could not be considered as a legal possession, the Decree of Restitution having issued ;
- (3) That vessels lying in harbour are on the issue of an order of embargo usually seized by the Marshal or the Officers of the Customs, who are not remunerated by any portion of the proceeds for so doing ; and that although rewards may sometimes be given to King's ships under such circumstances, yet that it would be dangerous to extend it to privateers and others ; and
- (4) That it has not been usual in cases depending in judgment on antecedent captures, where one-quarter is given to King's ships, and one-fifth to privateers and others, to vary the proportion on account of the amount of the proceeds in each case.

Accordingly Mr. Teed's application was rejected by their Lordships. This, however, did not prevent him from renewing his application in the month of November following, and with the same want of success.

In the year 1815 Mr. Teed again renewed his application for a further grant, and on a full report from the King's Proctor, dated the 2nd September 1815 (Treasury No. 13,666), it was again refused.

In a subsequent memorial from Mr. Teed of the 10th September 1819, he refers to the case of the "*Hoffnung*," which has been mentioned above and in which case one-fourth

was given to a King's ship, though the prize had been decreed to be restored before the embargo issued, but it has been already stated that that was an exceptional case, and was not adopted as a precedent for future cases.

Mr. Teed having soon afterwards died, the application was not again renewed until the month of May 1824, when his widow presented three memorials to their Lordships, which were as usual referred to the King's Proctor, who, in a report dated 30th June 1824 (Treasury No. 13,164), reviews the whole subject, and observes "that the representations of Mrs. Teed " are to be resolved into two principal points—

- " (1) the refusal of their Lordships to grant any portion of  
     " the proceeds of Danish ships, that had been  
     " actually restored on the former seizure, and were  
     " subsequently seized by the Marshal or by King's  
     " ships.
- " (2) the grant of one-fifth to the captors in the cases  
     " stated instead of a larger proportion, which  
     " is asserted to have been granted on former  
     " occasions."

In regard to the first question the King's Proctor refers to his former reports on the same subject and says that His Majesty's Advocate sees no reason to depart from the observations therein submitted and that "the same rule has been " observed in regard to King's ships under similar circum-  
 " stances in all captures during the same period."

And with regard to the second question the King's Proctor refers to his reports in the "Eleonora Charlotta" and "Sophia Amelia," which have been already mentioned, and states that their Lordships had "in those cases fixed the proportion of  
 " one-fourth as the fit reward to be granted to H.M.'s ships  
 " in cases of property depending in judgment on the breaking  
 " out of hostilities on justifiable causes of detention and  
 " devolving to His Majesty in that form, and that proportion  
 " has accordingly been granted in all similar cases of capture  
 " by King's ships. But, as it had been usual to make some  
 " distinction between King's ships and privateers, your  
 " Lordships were afterwards pleased to recommend the grant  
 " of one-fifth to privateers in that class of cases." And he then refers to the cases of the "Fortuna" and "Nayde," of which mention has been already made, and in which that proportion was granted to the captors.

Nothing perhaps could be more satisfactory as showing the practice, which prevailed quite up to the conclusion of our former wars, than this report of the King's Proctor written in June 1824, and it thus appears that a practice was for the first time adopted under the Prussian and Danish wars, and which was thenceforth strictly adhered to, of granting in cases of capture before embargo:—

One-fourth of the proceeds to King's ships if the property was under adjudication and in the legal custody of the captors at the time of the issue of the embargo.

One-fifth to privateers and others, if the property was under adjudication at the issue of the embargo, and if the original seizure had been made on justifiable grounds.

But no portion to either King's ships, privateers and others, if the property had been decreed by the Court to be restored by the issue of the embargo.

#### *Subsection 15 : Turkish War of 1807.*

We now come to the war with Turkey of 1807, in which we shall find that every capture that was made at sea, even captures during hostilities by King's ships, became, from the facts we are about to state, droits of the Crown, and the captors took in every case only such proportion as the Crown might think proper to give them. The circumstances of that war were as follow :—

Towards the end of the year 1806, Turkey having joined with France with a view to protect herself against the encroachments of Russia, with which power we were then in close alliance, orders were sent to Sir John Duckworth the commander-in-chief of the British naval forces on the Mediterranean station, directing him to proceed forthwith with the ships under his command to the mouth of the Dardanelles, to force a passage of those celebrated straits, and to compel the Turks by the threat of an immediate bombardment to relinquish the French and to adopt the Russian and English alliance. Upon the arrival of the British fleet off the mouth of the Dardanelles, an ultimatum was presented to Turkey demanding, amongst other things, the immediate dismissal of General Sebastiani, the French Ambassador, and the opening of the Dardanelles to the ships of Russia. Turkey, however, refused to comply with these demands; and on the 29th of January 1807 formally declared war against this country. On the 19th of February following, the Straits were forced by the British fleet, several Turkish vessels of war were destroyed, and we immediately found ourselves engaged in active hostilities against that power.

When the news of these proceedings reached this country, an embargo was, namely, on the 13th of May 1807, issued ordering the detention of all Turkish vessels. I do not, however, find that there was any formal declaration of war by the British Government on this occasion. The ultimatum, which had been presented by the British Ambassador to the Turkish Government, and the subsequent operations undertaken by our naval forces were in effect the declaration of war. It appears also, but whether this arose from accident or design I know not, that the usual prize proclamation, granting to commissioned captors the whole benefit of any captures which

they might make during hostilities, was not issued on this occasion, although, as we have seen, it had been usual to issue it on the occurrence of every war since the time of Queen Anne; nor, indeed, were the usual commissions sent to the Admiralty and Vice-Admiralty Courts authorising them to proceed to the adjudication of any Turkish vessels that might be taken.

In the meantime, however, and as the result of the orders which had been issued by the British Government, several Turkish prizes were captured by the British cruisers in the Mediterranean, and were sent by them—some to Malta, some to Gibraltar. But the Vice-Admiralty courts at those places not having received any commissions, and being therefore without jurisdiction to proceed to the adjudication, and the captors having no authority to detain the prizes in their own custody, the usual prize proclamation not having been issued, the vessels and their cargoes were, after having been detained for a very considerable time, at length handed over to the receivers of droits, and were by them sold and the proceeds transmitted to this country.

Thus matters remained, the captors taking no interest in any captures which they made, but being obliged to hand them over to the several receivers of droits.

At length, however, on the 7th of December 1808, an Order in Council was issued to the High Court of Admiralty (not the Order, which would usually be issued, directing it to proceed to the adjudication of all Turkish vessels), but an order to proceed to the adjudication of one Turkish vessel of war, the “Badere Zaffer,” which had been captured in the July preceding in the Mediterranean by H.M.S. “Seahorse.” The Order in question, which I have extracted from the records of the Council Office, is in the following words :—

“Whereas hostilities having taken place between His Majesty and the Sublime Porte, His Majesty was pleased by His Order in Council of the 16th of May 1807 to direct the commanders of His Majesty’s ships of war to detain and bring into port all ships and vessels bearing the flag of the Ottoman Empire.

“And whereas it has been represented to His Majesty that, in the month of July, in the present year 1808, an action took place in the Mediterranean between His Majesty’s ship of war, ‘Seahorse,’ commanded by Captain John Stewart, and the Turkish ship of war, ‘Badere Zaffer,’ commanded by Captain Kauderle Kichuc Alli, in which action, after a most desperate and good conflict, the said Turkish ship was captured through the superior gallantry, discipline, and spirit of the commander, officers, and crew of His Majesty’s said ship.

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\* “*Turkish Ship ‘Badere Zaffer.’*—Order to the Judge of the High Court of Admiralty to take cognizance of and give judgment in the Turkish prize ship of war ‘Badere Zaffer,’ lately captured by the ‘Seahorse’ frigate.”



"And whereas no commission has yet issued authorising generally His Majesty's Courts of Admiralty to adjudge and condemn the ships and goods belonging to the Ottoman Empire.

"His Majesty, taking the premises into His Royal consideration, is pleased, by and with the advice of His Privy Council, to order and direct, and it is hereby ordered and directed, that the Judge of the High Court of Admiralty shall take cognizance of, and judicially proceed upon, the said Turkish ship of war, 'Badere Zaffer,' and shall hear and determine the same according to the course of Admiralty and the Law of Nations, and upon due proof that the said ship was a ship of war bearing the flag of the Ottoman Empire, shall adjudge and condemn the same as good and lawful prize to His Majesty.

"And His Majesty is further pleased to order and direct that the said prize, after final adjudication thereof, shall be sold by the agents of the said captors, and the proceeds thereof shall be distributed among the commander, officers, and crew of His Majesty's said ship "Seahorse" as a reward of their distinguished gallantry in the capture of the said prize, such proceeds to be divided and distributed in the shares and proportions directed by His Majesty's General Proclamation for the Distribution of Prizes, and subject to the provisions of the Prize Act passed in the 45th year of His Majesty's reign."

Still no steps were taken in regard to the other Turkish vessels which had been seized. A memorial was presented to His Majesty on the 24th of April 1808 by a Mr. Turnbull, praying that the Turkish vessels taken to Malta and Gibraltar might be forthwith condemned. But still no steps were taken until the 29th of September 1812, when a further Order in Council was issued directing "measures to be taken for "bringing to adjudication in the High Court of Admiralty all "Turkish vessels and goods taken on the High Seas subsequent to the 18th of February 1807, and during the "continuance of the late hostilities between His Majesty and "the Sublime Porte, and the vessels and stores and other "booty taken at Alexandria and sent to Malta within the "period of time aforesaid;" and further ordering and directing "the judge of the High Court of Admiralty to take "cognizance of and judicially to proceed on such ships, goods, "and stores, and to hear and determine the same according to "the course of Admiralty and law of nations, and on due "proof that the same were belonging to the Ottoman Empire "or to subjects or inhabitants thereof, to adjudge and "condemn the same as good and lawful prize to His Majesty." It will, however, be observed that this Order in Council vested the proceeds, not in the captors, as had been done in former wars, and as was done in the case of the Turkish ship-of-war "Badere Zaffer," but in His Majesty.

Upon this Order being issued proceedings were commenced in the High Court of Admiralty against all the Turkish ships and cargoes, which had been thus captured, and they were accordingly condemned as prize to His Majesty as Turkish property taken during the continuance of hostilities with that Power.

Memorials were thereupon presented by the captors praying that, as "upwards of seven years had elapsed since the capture of these prizes, and as the subjects of the Ottoman Portes were in a direct state of hostility with this country," the usual appropriation of this property might be made, and the whole of the proceeds be granted to them. These memorials were referred as usual to the King's Proctor; and amongst the first, upon which he reported, was that of the "*San Giovanni*" *alias* "*Principe Calimachi*" (Warrant No. 974). In his report on that case, bearing date the 29th of July 1815 (Treasury No. 11,580) after stating the facts of the case, he observes as follows:—"And having deemed it advisable to lay the said memorial before His Majesty's Advocate General, and to attend and consult with him on the subject, I have accordingly so done, and under his advice, I do most humbly to report to Your Lordships that the case of these captures is distinguished from ordinary seizures before the declaration of hostilities by the fact that Sir John Duckworth was empowered by his instructions to commence hostilities on certain contingencies depending on the acts of the Turkish Government and did so virtually commence hostilities before the time of this capture. Under such circumstances and considering the great length of time which has unavoidably intervened between the act of capture and the condemnation, it is submitted to your Lordships whether the captors might not with propriety be put on the same footing as captors of American ships and cargoes on the American stations, by extending to them the benefit of the additional grant of nine-tenths of the share reserved to the Crown on ordinary occasions of this kind. It will be proper in this case to grant two-thirds of the proceeds, and, if your Lordships are pleased to adopt the rule, nine-tenths of of the remainder." We shall presently see what was the rule which is here referred to, as having been laid down in regard to the American captures. In regard, however, to the Turkish captures their Lordships did not think proper to deviate from the rule, which they had, as we have seen, laid down under the Prussian and Danish wars in regard to grants out of the droits, and accordingly granted only two-thirds of the proceeds in this case to the captors.

Shortly afterwards, and before their Lordships' decision had been made known in the preceding case, the King's Proctor reported on a memorial from the privateers "*Vice-Admiral Nelson*" and "*Pearl*" for a share of the Turkish prize "*El Genaro*" (Warrant No. 972) captured by them in pursuance of

the order of embargo of the 13th of May 1807. In his report on this case, dated the 4th of August 1815 (Treasury No. 12,025), the King's Proctor observes "Your Lordships have not given any particular directions respecting Turkish property, but since it has been treated as prize of war condemned to His Majesty, the seizors will according to their usual practice be entitled to some remuneration. Unless your Lordships should be pleased to give any special directions in these cases, it will be proper, according to the proportions allowed in other cases of captures by non-commissioned vessels or privateers, to grant to the captors a moiety of the proceeds." And accordingly a moiety was in this case granted.

In the case of the "Madonna" (Warrant No. 985), on which the King's Proctor did not report until the 20th of November 1815 (Treasury No. 17,527), and at which time the decision of their Lordships in regard to these prizes had been made known to him, we find him stating "that it will be proper to grant to the commander, officers, and crew of the 'Hirondelle' two-thirds of the proceeds, according to the proportions established by your Lordships in other Turkish cases."

The number of Turkish prizes thus captured and disposed of, appears to have been but small. We find, however, in these, as we have seen in the Prussian and Danish captures already referred to, the same distinction made as to the proportions granted to King's ships and to privateers and others, the same variation of the proportions with the amount of the proceeds in each case.

Thus we find—

Nine-tenths of the proceeds of three Turkish prizes (Warrant No. 1034), in each of which the proceeds were under 300*l.*, granted to H.M.S. "Glatton," the captor ;

And the same proportion of "La Buona Esperanza" (Warrant No. 1,036), in which the proceeds were 161*l.* 11*s.* 10*d.*, granted to H.M.S. "Melpomene."

Likewise two-thirds of the proceeds of several other prizes, in which the proceeds were between 300*l.* and 10,000*l.* (Warrants No. 958, 960, 962, 974, &c.), granted to various King's ships, the captors.

On the other hand, only—

One-half of the proceeds of "El Genaro" (Warrant No. 972) was granted to the privateers "Vice-Admiral Nelson" and "Pearl," the proceeds being 4,286*l.* 6*s.*, and the same proportion of the "San Nicolo" (Warrant No. 1,016) to the privateer "La Trinita," the proceeds being 749*l.* 13*s.* 8*d.*

Thus, then, we see that in the case of the Turkish prizes, where the captures had taken place during hostilities, but where the prizes had been condemned as droits to the Crown in consequence of the Government not having issued the usual

prize proclamation, the same proportions were granted to the captors as if the captures had been made under an embargo and before a formal declaration of war, and that the same rules were adhered to as had been laid down in regard to the Prussian and Danish captures.

*Subsection 16: Italian and Russian Wars of 1807.*

The progress of the French arms in Europe, the issue of the Berlin and Milan Decrees, and the Treaty of Tilsit between France and Russia naturally led to a further extension of the war and to our soon finding ourselves engaged with new enemies.

On the 4th of November 1807 war was declared by this country against Tuscany, Naples, Ragusa, the Seven Islands, and other ports and places in the Mediterranean and Adriatic Seas occupied by the French troops. On the 9th of December following an embargo was laid upon Russian property, and on the 18th of the same month war was formally declared against that Power.

The usual prize proclamations were issued granting to the commissioned captors the whole benefit of any captures which they might make during hostilities from any of the above-mentioned States, and as no captures appear to have been made by any non-commissioned vessel the only droits which we shall have here to consider are droits of the Crown resulting from captures effected at sea before hostilities. These cases do not appear to have been very numerous; still, so far as they go, they show that in making grants thereout to the captors the same distinction was observed between ships of the Royal Navy and privateers, and the same proportions adhered to as had been fixed in regard to the Prussian and Danish captures. Thus we find—

Two-thirds of the proceeds of the Russian prize "Gambivium" (Warrant No. 490) granted to H.M.S. "Stately," the captor.

Two-thirds of the Roman prize "Perle" (Warrant No. 555) granted to H.M.S. "Niger," the captor.

Two-thirds of the Russian prize "La Belle Aurora" (Warrant No. 666) granted to H.M.S. "Scout," the captor.

Two-thirds of two other Roman prizes (Warrant No. 694) granted to H.M.'s bomb vessel "Thunder" and another, the captors.

Two-thirds of three Italian prizes (Warrant No. 781) granted to the Mediterranean Fleet under Lord Nelson, the captors thereof.

And again—

Half of the Ragusan prize "Diligente" (Warrant No. 650) granted to the privateer "La Madonna del Carmine," the captor.



In each of the above cases the proceeds were above 300*l.*, but under 10,000*l.*, and the capture had taken place only a very short time before the declaration of war, and if not under the embargo, at all events in pursuance of the orders of His Majesty's Government and in contemplation of hostilities.\*

When, indeed, the capture had been made before hostilities, and without reference thereto, but the property was still under adjudication and in the legal custody of the captors at the time of the issuing of the embargo or the declaration of war, then again the same proportion was granted as had been fixed upon for similar cases under the Prussian and Danish hostilities.\*

Thus we find—

One-fifth of the Russian part of the cargo of the "Nayde" (Warrant No. 629), a case which has been already mentioned, granted to the privateer "Thomas and John," the capture having been originally made on justifiable grounds, but without reference to hostilities with Russia.

Also—

One-fifth of the Ragusan prize "Invidiato" (Warrant No. 822), captured on the 26th of July 1806, more than a year and a quarter before the declaration of war against that State by the privateer "Betsey."

#### *Subsection 17: American War of 1812.*

We now come to the American War of 1812.

The circumstances which preceded this war were, as we shall presently see, somewhat peculiar. Hostilities were in fact commenced by the commanding officers of our naval forces on the North American stations. But the Government did not omit, as it had done in the Turkish war, to issue the usual formal documents.

It was on the 31st of July 1812 that the usual embargo was issued against the United States; war was formally declared by this country on the 13th of October following; the usual prize proclamation was then issued granting the whole benefit of any captures they might make at sea during hostilities to the commissioned captors, and the usual authority was given to the Admiralty Courts.

In this war, as in those which we have just been considering, I am not aware that any capture was made at sea by any non-commissioned vessel; indeed, such captures had at this time become extremely rare. So that the only droits, which we shall have here to consider, are those resulting from captures made at sea before hostilities. And in regard to these we shall find that, although a special exception was under very peculiar circumstances made in regard to a certain class of captors, by

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\* *Ante*, p. 71 *et seq.*

which they were allowed to receive in certain cases, in addition to their usual proportions, a part also of the share usually reserved to the Crown, yet that the same distinction was made between ships of the Royal Navy and others, and the same general rules observed in regard to the proportions granted as had been laid down for the Prussian and Danish captures.\*

The circumstances, under which this war commenced, were as follows :—

It would appear from memorials, which were presented to the Admiralty in February 1813, on behalf of Admiral Sir Thomas Duckworth and Vice-Admiral Sawyer (Treasury No. 3266), that H.M.'s Government anticipating hostilities with America had, in the months of May and June 1812, despatched several ships of war under the command of those officers to the coast of America, with orders to commence hostilities against the United States, in the event of certain contingencies occurring. Upon the arrival of our ships of war off the coast of America, it was ascertained that the United States had already declared war against this country, and as that was one of the cases which had been contemplated, the Admirals immediately, in accordance with the orders which they had received from H.M.'s Government, commenced hostilities against the United States by seizing all the American vessels, with which they fell in. Many of these vessels were destroyed, the Admirals being in daily expectation of falling in with the American squadron, and therefore unwilling in any degree to weaken their strength by sending away seamen with the prizes. Some, however, were sent to the port of St. John's, Newfoundland, to Halifax, and to Bermuda, where they were subsequently, on war being declared by this country, condemned to His Majesty's *jure coronæ* as having been captured before a formal declaration of war. It was to these prizes that the memorials of Admirals Duckworth and Sawyer above-mentioned referred.

The memorialists prayed that the whole proceeds of all such American prizes might be given to them, "as if they had been " captured subsequent to the declaration of war " by this country, Admiral Duckworth observing that "a state of more " complete reciprocal hostility could not have existed, even if a " formal declaration of war had already taken place on the " part of the British Government." One circumstance also was stated, as entitling the captors to a higher remuneration than that usually granted for captures made before hostilities, namely, that many of our men had been killed in the engagements which had ensued, and particularly in attacking the enemy's armed ships.

These two memorials were referred by the Admiralty to the then King's advocate, Sir Christopher Robinson, and his

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\* *Ante*, p. 71.

observations thereon are so full of interest and so important that I propose to quote his letter at length.

It is as follows :—

“To J. W. Croker, Esq.,<sup>\*</sup>

&c., &c., &c.,

“Doctors’ Commons,

“SIR,

8th March 1813.

“I AM honoured with your letter of the 27th ultimo, transmitting copies of two memorials from Admiral Sir Thomas Duckworth and Vice-Admiral Sawyer, to be allowed the full benefit of American ships captured by them, and also copies of certain orders of the Lords Commissioners of the Admiralty relative to the detention and capture of ships or vessels belonging to the United States, and requesting that I would state, for their Lordships’ information, my opinion whether it may be proper to comply with the prayer of the said memorials, and if proper, in what mode I would recommend it to be carried into execution.

“In obedience to their Lordships’ direction, I have considered the same, and am of opinion that the proceeds of these captures being vested in His Majesty *jure coronæ* and under the direction of the Treasury, the application should be made to the Treasury in the usual form, and the grant be made by warrants as in other cases of a similar description, if it shall be deemed advisable to comply with the request, whether it may be so expedient is a question of discretion altogether for the consideration of His Majesty’s Government, on which I can only offer such observations as occur to me without presuming to form a decided judgment upon it.

“In a general view it is reasonable that consideration should be had of special circumstances tending to place the naval forces of the country more nearly in the condition of actual war than usually results from mere orders of embargo. It has accordingly been the practice to grant the whole proceeds of ships of force captured in actual engagement, though before the declaration of hostilities. But in such cases the amount of the additional interest granted, though highly valued by the captors as a testimony of their merit and as an increased remuneration, is not an object of much general importance; the line of distinction is clear, and the liberality of the Crown is exercised without danger of establishing a precedent that may lead to inconvenience in other cases.

“The present question involves very different consequences, from which arise the only objections which I am able to suggest against complying with the prayer of the memorialists.

“Orders of embargo are likely to be issued at the commencement of every war. It is probable that the commanders on other occasions may be invested with provisional powers to commence hostilities on contingencies specified in their instructions, and

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\* Secretary to the Admiralty and man of letters (1780-1857).

also that the foreign Power may issue its declaration of war long before it can be known to His Majesty's Government. These circumstances, I believe, did accompany the commencement of hostilities with the Porte and with Denmark. Those cases are therefore so nearly similar to the present that an extension of the ordinary bounty of the Crown in the present case might seem to be due also in those and in other similar cases that may be likely to occur.

"The proportion usually granted in seizures made prior to the order for reprisals and the proclamation, is on an average two-thirds of the net proceeds. The present petition for the whole cannot be sustained as a claim of right; as an application for special favour, it is distinguished rather by the length of time intervening between the enemy's declaration and our order of reprisals, than by any circumstances of a positive nature which have hitherto been held sufficient to raise such an exception.

"Under these observations I do not feel myself warranted to advise that it would be proper to comply with the request; at the same time, if His Majesty's Government, on a more extended view of the subject, should be disposed to think that it would be expedient to grant the prayer of the petitions, I am not aware of any other objection to it than what arises from the danger of confounding in future the distinction between property of this description and those interests in prize which the policy of the country has given absolutely to the captors.

"I have, &c.,

"(Signed) CH. ROBINSON."

Upon this the whole of the papers were forwarded by the Admiralty to the Treasury, as was also a letter from Admiral Sawyer dated the 26th of March 1813 (Treasury No. 4772), in which he states that the squadron under Captain Brooke, sent out by him to "endeavour to intercept the American squadron, "burnt near thirty sail (some of them of considerable value) "that they might be in a fit state to attack the enemy."

The matter was then very fully considered by their Lordships, and on the 9th of April a minute was drawn up in the following terms:—"My Lords, having taken into their consideration "the peculiar circumstances attending the commencement of "hostilities with America and the very meritorious conduct of "the captors on the American stations and particularly the "considerable sacrifices which they made of their own immediate interests for the public service by destroying a number "of vessels, which they might have sent into port, in order to "avoid the necessity of weakening their own crews and thereby "disabling themselves from acting so efficiently against the "enemy, are of opinion that these special grounds will warrant "them in recommending to His Royal Highness the Prince "Regent in addition to the proportion usually granted to



“captors of droits of the Crown to make a further grant to captors of vessels on the American stations, as a compensation to them for the loss which they will sustain in consequence of the vessels so destroyed as aforesaid, of nine-tenths of the reserved proceeds of all vessels and cargoes taken by them at sea, and condemned as droits of the Crown in the Vice-Admiralty Courts of Halifax and Bermuda.

“Transmit copy of this minute to Mr. Croker, for the information of the Lords of the Admiralty, and to the King’s Proctor, for the information and guidance of His Majesty’s advocate in his reports to this Board when the individual cases of capture shall come before him.”

One of the first cases in which a grant was made upon this liberal scale, was that of the “Science” (Warrant No. 854), captured on the 14th of August 1812 by H.M.S. “Alpheia,” one of the ships belonging to the squadron of Admiral Sawyer. The King’s Proctor, in his report on that case dated the 25th of May 1814 (Treasury No. 7727), after stating the circumstances observes “that it will be proper to grant to the captor two-thirds of the proceeds agreeable to the proportion usually allowed in cases of this value” (the proceeds being 3,198*l.* 14*s.* 6*d.*), “and further to grant nine-tenths of the remaining share usually reserved to the Crown according to your Lordships’ directions respecting American vessels captured on the American stations, as intimated by Mr. Harrison’s letter of 26th April 1813.” And accordingly a warrant (No. 854) was issued for those proportions.

Again, in the case of the “Anacreon” (Warrant No. 908), captured on the 12th of July 1812 by H.M.S. “Jason,” the King’s Proctor, in his report of the 5th of January 1815 (Treasury No. 258), observes “that the capture was made by a cruiser on the Newfoundland Station under the command of Admiral Duckworth, and as such is presumed to come under your Lordships’ order of the 9th April 1813 for additional grants to cruisers on the American stations, and that agreeably to that order it will be proper to grant to the commander, officers, and crew of His Majesty’s Ship ‘Jason’ two-thirds of the proceeds and nine-tenths of the Crown’s share.”

Similar reports were also, on the same day, made by the King’s Proctor (Treasury Nos 257 and 259 of 1815) in the case of the American ships “Castor” and “Eliza,” captured on the 31st of July and 2nd of August 1812 respectively by H.M.S. “Antelope,” which was also one of the cruisers on the Newfoundland Station, and under the command of Admiral Duckworth.

It would appear, however, that this additional grant of nine-tenths of the Crown’s share was strictly confined to His Majesty’s ships on the American stations, for in the case of the American ship “Warren” (Warrant No. 892), captured on the 5th of September 1812 by His Majesty’s ships “Sybille” and “For-

tunée" (neither of which belonged to any of the American stations), the King's Proctor, in his report of the 5th of January 1815 (Treasury No. 260), observed "that a grant of two-thirds of the net proceeds will be a fit reward to the commanders, officers, and crews of His Majesty's ships 'Sybille' and 'Fortunée,' conformably to what has been done in other cases under similar circumstances, as this case does not appear to come within the terms of Your Lordships' special order of April 1813."

Likewise, also, in the case of the "Wasp" (Warrant No. 888), captured on the 4th of August 1812 by H.M.'s cutter "Earl Spencer," which also did not belong to any of the American stations, the King's Proctor in his report of the same date (Treasury No. 261) expressed himself in nearly similar terms.

I have said that the same proportions were granted, and the same distinctions made between ships of the Royal Navy and others, as had been done in the case of the Prussian and Danish droits. I will cite one example of each class. Others may easily found by examining the accompanying register.

Thus—

Nine-tenths of the proceeds of the "Tyger" (Warrant No. 1005), amounting to only 33*l.* 9*s.* 2*d.*, were granted to H.M.S. "San Juan" and five others.

Two-thirds of the proceeds of the "Sukey" (Warrant No. 847), amounting to 2,470*l.* 0*s.* 2*d.*, were granted to H.M.S. "Vigo."

One-half of the proceeds of the "Dido" (Warrant No. 855), amounting to 11,531*l.* 8*s.* 2*d.*, was granted to H.M.'s gun brig "Gallant."

Again nine-tenths and nine-tenths of the remainder of the proceeds of the Essex (Warrant No. 882) amounting to 69*l.* 3*s.* 1*d.*, were granted to H.M.S. "Electra."

Two-thirds and nine-tenths of the remainder of the proceeds of the "Fame," the "Polly," the "Pilgrim," the "William," and the "Swallow," were, by the same Warrant (No. 882), granted to the same vessel, the "Electra," the proceeds in each case being between 300*l.* and 600*l.*; and

One-half and nine-tenths of the remainder of the proceeds of the "Friendship" (Warrant No. 846), amounting to 14,092*l.* 2*s.* 11*d.*, were granted to H.M.S. "Rosamond," and the same proportions of the proceeds of the "Hare" (Warrant No. 879), amounting to 22,149*l.* 1*s.* 7*d.*, to H.M.S. "Belvidera."

Likewise, also, in regard to privateers and others, we find —

Four-fifths of the proceeds of the "San Pedro" (Warrant No. 1088), amounting to only 185*l.* 13*s.* 1*d.*, granted to the privateers "Theodore," "Three Brothers" and "Midge," the captors; and

One-half of the proceeds of the "Desdemona" (Warrant No. 862), amounting to 1,339*l.* 3*s.* 11*d.*, granted to the Revenue cutter "Nepeau," and the same proportion of the proceeds of the "Factor" (Warrant No. 867), amounting to 8,136*l.* 12*s.* 1*d.*, granted to the privateer "Hero."

No instance occurred under the American embargo of a capture by a privateer or non-commissioned vessel where the proceeds exceeded 10,000*l.*; had there been any such, there can be little doubt that the captor would have received two-fifths of the proceeds if under 20,000*l.*, and three-eighths if above that amount, the proportions adopted in regard to the Prussian and Danish captures.

And here I would make the same remarks, as I have already done in reference to the captures before the Spanish War of 1805, namely, that many of the prizes were seized *before* the date of the embargo, and yet that the captors received the same proportions as though the capture had been made in pursuance of the embargo; which would at first sight appear to be a violation of the principles laid down in the Prussian and Danish wars in regard to captures *before* embargo.

The embargo, indeed, against the United States was issued on the 31st of July 1812 and yet we find the captors receiving the usual proportions for captures made by them throughout the whole of the month of July and even at the end of June in that year; as, for instance, by Warrants Nos. 880, 882, 890, 894-5-6, 901, 904-5-6-8 and 9, 910, 913, 919 and many others.

The explanation, however, is the same as in the Spanish cases. These captures were all made by ships belonging to the fleets of Admirals Sawyer and Duckworth, who, as we have seen, were sent out from this country in May and June with special instructions to commence hostilities against the United States in the event of certain contingencies occurring. These captures therefore, although made before the embargo, were nevertheless made in pursuance of the orders of His Majesty's Government, and, as such, would fall under the same category as captures made in pursuance of an embargo.

Where, however, the capture had been made before the embargo and without reference to hostilities with America, we shall find that the same principle was adopted which had been laid down for similar cases in the Prussian and Danish Wars, namely, to give to the captors, when ships of the Royal Navy, one-fourth of the proceeds.

Thus we find that—

One-fourth of the proceeds of the American vessel "Mary" (Warrant No. 1020) was granted to H.M.S. "Liberty," the prize having been originally captured by the "Liberty" for a breach of the Revenue laws, and subsequently, on the breaking out of the war, condemned as a *droit* to the Crown; also

One-fourth of the American portions of the cargoes of the "Caledonia," "Eliza," and "Ruthy," captured on the 3rd, 9th and 11th days of November 1808 was granted to His Majesty's Ships "Amaranthe" and "Circe," those vessels having been seized several years before the issue of the embargo against America, and consequently without any reference to hostilities against that country; but doubtless the original grounds of the detention had been justifiable, and the property was in the possession of the captors at the time of the issue of the embargo against America.

#### *Subsection 18: French War of 1815.*

A few words will suffice for this war.

It does not appear that any embargo was issued in this case for the detention of French vessels, nor, indeed, was there any formal declaration of war until the 21st of June 1815, three days after the battle of Waterloo. The usual Prize Act was passed, and the usual prize proclamation issued, granting to the commissioned captors all interest in any captures they might make at sea during hostilities.

As to the droits, however, there would seem to have been but one case. It was that of the "Ville d'Amiens" (Warrant No. 1084), captured by His Majesty's frigate "Desirée" on the 26th of May 1815, and, therefore, prior to the declaration of war. It was most probable that the capture was effected in pursuance of orders from the Government, although no embargo, as we have said, was issued; for we find the usual proportion of the proceeds granted to the captors, namely, two-thirds, the capturing vessel having been a ship of the Royal Navy and the proceeds 337l. 6s. 10d.

#### *Subsection 17: Capture of Armed Vessels.*

Before we conclude this division of our subject, namely, captures at sea, it will be necessary to refer to the capture of armed ships belonging to the enemy.

We have already seen in the letter of Sir C. Robinson to the Admiralty quoted above "that it had been the practice " to grant the whole proceeds of ships of force captured in " actual engagement, though before the declaration of hos- " tilities." Armed ships captured during hostilities by ships of the Royal Navy or by duly commissioned vessels, where the usual prize proclamation had issued, belonged, of course, like any other vessel to the captors. Captures of armed vessels by a non-commissioned one were, I need hardly say, very rare; but in these cases also, as we shall find, the whole proceeds were invariably granted to the captors. The principle seemed to be that in all cases of an armed vessel belonging to the enemy being captured at sea the whole proceeds should be given to



the captors, whether the capture had occurred before or during hostilities, whether by a King's ship, privateer, or non-commissioned vessel.

To show that this has been the practice from the earliest period to which the register extends, I will here refer to some of the cases which are to be found in it.

Thus we find the whole of the proceeds—

of "Le Sartine" (Warrants Nos. 3 and 4), a French ship-of-war captured in 1778, granted to non-commissioned captors;

of the "Overysse" (Warrant No. 121), a Dutch ship-of-war captured in 1795 by H.M.S. "Polyphemus";

of "La Medea," "La Fama," and "La Clara" (Warrant No. 136), Spanish ships-of-war captured on the 5th of October 1804 by H.M.'s ships "Indefatigable," "Lively," "Medusa," and "Amphion";

of the "Amphitrite" (Warrant No. 214), a Spanish frigate captured on the 17th November 1804 by H.M.S. "Donegal";

of the "Fredericksveern" (Warrant No. 421), a Danish frigate captured on the 14th August 1807 by H.M.'s ships "Comus" and "Defence";

of "L'Esperance" (Warrant No. 768), a French privateer captured on the 25th September 1809 by Lieut.-Colonel Maxwell and the garrison at Senegal;

of the "Oprecht" (Warrant 803), a Dutch brig-of-war captured on the 4th May 1811 by H.M.'s packet "Townshend," which was a non-commissioned vessel;

of the "James Maddison" (Warrant No. 852), an American ship-of-war captured on the 22nd August 1812 by H.M.'s ships "Barbadoes" and "Polyphemus";

of the "Actress" (Warrant No. 875), an American privateer captured on the 18th July 1812 by H.M.S. "Spartan";

of "La Ventura" (Warrant No. 928), Spanish schooner-of-war captured on the 17th November 1804 by the fleet under the command of Lord Nelson;

and of "La Melpomene" (Warrant 1087), French frigate captured on the 30th April 1815 by H.M.S. "Rivoli."

All the preceding cases are either captures by ships of the Royal Navy before hostilities which, on condemnation, became droits of the Crown, or captures by non-commissioned vessels during hostilities, which, when condemned, became droits of Admiralty, as in the case of the ships "La Sartine" and others (Warrants Nos. 3 and 4) captured by the East India Company's ships "Resolution," "Charlotte," "Southampton," "Nassau," "Valentine," and "Bessborough," and in that of the "Oprecht" (Warrant No. 803), captured by the packet ship "Townsend," also a non-commissioned vessel. And if to these be added the case of the Turkish ship-of-war "Badere Zaffer," captured by

H.M.S. "Seahorse" during hostilities, but where the usual prize proclamation had not issued, and to which we have already referred, we shall find that whenever an armed vessel was taken from the enemy the whole of the proceeds were invariably granted to the captors.

Indeed, the principle was still further extended in the case of the "Vengeur" (Warrant No. 146), a French merchant vessel captured in 1797, whilst in company with a French frigate of 22 guns, after a long and severe engagement, by a privateer and non-commissioned vessel. The capture having occurred during hostilities, the privateer, which was duly commissioned against the French, took, as a matter of course, under the Prize Act and the proclamation, its share of the proceeds; but the share of the non-commissioned vessel was condemned by the court as a *droit* of Admiralty. The Crown, however, gave up the whole of the share, which had devolved to it, to the non-commissioned captor, in consequence, no doubt, of the action in which she had been engaged in effecting the capture.

To show, too, that when the amount of the reward was left by the Crown to the decision of the Court of Admiralty, that Court acted also upon the same principle, I would refer to the case of the "Haase."\* That was the case of a Dutch vessel carrying gunpowder from Batavia to be distributed amongst the back settlements at the Cape of Good Hope. She was captured by a South Sea whaler during hostilities, and was accordingly condemned as a *droit* of Admiralty, the whaler being non-commissioned, and the Crown then referred it to the Court of Admiralty to reward the captors.

It appeared that the captors had taken possession of the ship without resistance, but on following a part of the gunpowder which had been landed, they were exposed to a fire of musketry from the blacks, and had to sustain something of an engagement. It appeared, also, that the capturing ship had lost the chief object of her voyage by this service. The Court accordingly gave the captors the whole of the proceeds, amounting to about 2,900*l*.

*Subsection 18 : General Summary as to Grants out of Droits captured at Sea.*

Where, then, the prize had been *captured at sea* and the proceeds, either from the capture having been effected before hostilities or from the usual prize proclamation not having been issued, had become *droits* of the Crown, or from having been effected by a non-commissioned vessel during hostilities, had become *droits* of Admiralty, the practice in regard to grants to the captors was as follows:—

First, if the prize was a ship of war or had been captured after an engagement, the whole of the proceeds were invariably granted to the captors.

\* 1 C. Rob. 286.

If, however, the prize was an ordinary merchant vessel and the capture had been effected without resistance.

Then in the wars immediately preceding the Spanish War of 1796 the grants, although very irregular, were on an extremely liberal scale, five-sixths, nine-tenths, and even the whole being frequently granted to the captors.

Under the Spanish war of 1796 a uniform practice began to prevail of granting two-thirds of the proceeds to the captors, whether ships of the Royal Navy, privateers, or non-commissioned vessels, except only in the case of the proceeds being very small, when the whole seems generally to have been granted.

Under the French and Dutch wars of 1803 the general rule was to grant—

two-thirds to ships of the Royal Navy, and  
one-half to privateers and others.

Under the Spanish war of 1805 a practice was introduced of granting in the case of bullion or specie condemned as droits—

one-fourth to ships of the Royal Navy ;  
one-fifth to privateers.

But as to the proceeds of ships and cargoes in the first few cases the same rule was adopted which had been in use under the preceding wars, namely, that of granting two-thirds to King's ships and one-half to privateers and others. This rule was, however, soon afterwards deviated from, and it became the practice where the proceeds were large to grant only—

one-half to ships of the Royal Navy, and  
one-third to privateers and others.

And in the latter part of the Spanish War and in the succeeding wars with Prussia in 1806 and with Denmark in 1807, a practice was finally established, which was continued in all our subsequent wars, and which was as follows:—

If the capture had been effected under an embargo or in pursuance of the orders of Government, or by a non-commissioned vessel during war—

then, if the proceeds were under 300*l.*—

ships of the Royal Navy received nine-tenths,  
privateers and others, four-fifths ;

if between 300*l.* and 10,000*l.*—

ships of the Royal Navy, two-thirds,  
privateers and others, one-half ;

if between 10,000*l.* and 20,000*l.*—

ships of the Royal Navy one-half,  
privateers and others, two-fifths ;

if above 20,000*l.*—

ships of the Royal Navy, one-half as above,  
privateers and others, three-eighths.

But, if the capture had taken place before embargo, and before any orders had been issued for the detention of the enemy's ships or goods, then—

if the property had been released before the issue of the embargo, notwithstanding that it might be subsequently re-seized by the Crown and condemned as a *droit*, the captors received no part of the proceeds;

if, however, the property was still under adjudication and in the legal custody of the captors when the embargo issued, and if the original detention had been made on justifiable grounds, the Crown granted—

One-fourth of the proceeds to King's ships,

One-fifth to privateers and others,

and this without reference to the amount of the property in either case.

Lastly, under the American war of 1812, a special exception was made in favour of the ships on the North American stations, by which they received, in addition to the proportions usually granted to captors, nine-tenths of the shares usually reserved to the Crown. Thus—

if the proceeds were under 300*l.*, they received—

Nine-tenths thereof and also nine-tenths of the remaining tenth;

if between 300*l.* and 10,000*l.*—

Two-thirds thereof and nine-tenths of the remaining third;

if above 10,000*l.*—

One-half thereof and nine-tenths of the other moiety.

#### *Subsection 19: Proportion in Cases of Joint Captures.*

Before we altogether quit this part of the subject, it may be desirable to state what was the course adopted by the Government in cases of joint capture, where the capture had been effected by ships belonging to different classes; as by a ship of the Royal Navy and a privateer or non-commissioned vessel, and where the captors would severally be entitled to different proportions of the proceeds. In such cases the Crown always gave the captors the benefit of the larger proportion.

Thus in the case of the Danish vessel "*Cecilia Catherina*" (Warrant No. 611), captured by the privateer "*Lord Cochrane*" and H.M.S. "*Humber*," where the proceeds were 992*l.* 15*s.* 3*d.*, and where consequently the privateer would ordinarily have been entitled to one-half and the ship of the Royal Navy to two-thirds of the proceeds, had the capture been effected by one or the other alone. In this case, however, the Crown gave the larger proportion, two-thirds.

Similarly, in the cases of the Prussian vessels "*Vyf Gesusters*" and "*Vrouw Fengina*" (Warrants Nos. 876 and 877) captured under the embargo by the Revenue cutter

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"Badger" and H.M.S. "Orpheus," and where the proceeds were respectively 139*l.* 14*s.* 3*d.* and 376*l.* 12*s.* 8*d.* Had the capture been effected by the Revenue cutter alone, four-fifths of the former and one-half of the latter only would have been granted to the captors; but the Crown gave the larger proportion, namely, nine-tenths in the former and two-thirds in the latter case, in consequence of a King's ship having been one of the captors.

Indeed, in the case of the Danish ship "Redeligheden" (Warrant No. 565), captured under the embargo by the privateers "Lord Cochrane" and "Resolution," this principle is distinctly laid down. In that case the proceeds were under 300*l.*, and the Crown had granted a moiety of the proceeds, that being the usual proportion for privateers. Mr. Teed, however, the owner of the privateers, does not appear to have been satisfied with this grant, and he accordingly addressed a further memorial to the Treasury, praying for a grant of two-thirds of the proceeds, on the ground that the capture had been made by two vessels, and stating that that proportion had been granted in the case of the "Cecilia Catherina" (Warrant No. 611) referred to above. On this memorial being referred to the King's Proctor, that officer, in his report of the 12th of May 1813 (Treasury No. 6610), observed, "that in the case 'referred to' (that of the 'Cecilia Catherina') 'the larger proportion was allowed not because there were two vessels entitled to share as joint captors, since the proportion has never been varied on that account, but one of the vessels being in H.M.'s service was entitled to the larger proportion, and it was an extension of favour to allow the benefit of that exception to the privateer also, as is usually done in cases of salvage, where there are joint salvors entitled severally to different proportions of salvage. The present case is not under similar circumstances, and therefore it will not be advisable to comply with the prayer of the petition.'" And accordingly the application was rejected.

#### *Subsection 19: Slave and Pirate Droits.*

There are likewise two other classes of captures at sea, a few cases of which will be found in the accompanying register, and which, although they do not properly belong to this inquiry, I will here just mention, to show that they have not escaped my observation.

The first is that to which belong the piratical vessels "Constantia" and "Zaragozana" (Warrants Nos. 1212 and 1213), captured in 1822-3, and "Las Damas Argentinas" (Warrant No. 1225), captured in 1828. In all of these cases the Crown granted the whole of the proceeds to the captors, doubtless on the same principle on which it acted in reference to armed vessels captured from the enemy.

The second class of cases is that of the slave vessels "Fortuna," "Gallicia," and "General Palafox" (Warrants Nos. 835-6), captured in 1810, and "L'Eclair" (Warrant No. 1,141), captured in 1811. In each of these cases the Crown gave three-fourths of the proceeds. Why this proportion was fixed upon as proper to be granted to the captors in these cases I am not aware, nor, indeed, have I thought necessary to ascertain; the present inquiry, as I have stated, having reference, not to seizures of every kind, but to those having some relation to war.

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## CHAPTER III.

## CAPTURES IN PORT.

## SECTION 1: SEIZURE BEFORE HOSTILITIES UNDER AN EMBARGO.

We now come to the third and last great division of our subject, namely, Captures in Port.

The greater number of such captures took place of course under the embargo or stop, which, as we have seen, frequently preceded by several months a formal declaration of war. The terms of an embargo were that no ship or vessel belonging to His Majesty should be permitted to clear out for any port of the offending State, and that a general embargo or stop should be made of all ships and vessels whatsoever belonging to that State, "now within or which shall hereafter come into any of the ports, harbours, or roads within any of His Majesty's dominions."

Now, although a general embargo, as it was called, was thus issued against the ships and goods of any particular State, it was not every person who was entitled to carry it into execution; such a course, indeed, would have led to the greatest irregularities and to the most lawless acts of violence. On the contrary, it was addressed specially to "the Right Honourable the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports," who were ordered to "give the necessary directions herein as to them may respectively appertain." In pursuance of this order the Lords Commissioners of the Treasury directed the Board of Customs through its officers; the Admiralty directed the admirals at the outports, the commanding officers of its ships of war, and the Marshal of the Court of Admiralty, and the Lord Warden of the Cinque Ports his proper officers to seize all the ships of the offending State which might be found within the limits of the kingdom. Orders also were sent to the Governors of our several colonies to carry the embargo into effect within the limits of their several territories. The property thus seized was then put for safe custody into the charge either of the Marshal of the Court of Admiralty or his deputies or of Commissioners specially appointed for the purpose; and, in the event of war ensuing, it was condemned, as we have said before, as a *droit* to the Crown.

Now the seizure of a vessel in port under an order of embargo was a matter attended with so little risk or difficulty, the enemy's vessels being naturally at such time under their true national colours, and any resistance to the seizure altogether improbable, that it was not usual to reward the seizing officer for the performance of this service. An exception was, indeed, made, as we shall hereafter find, from motives of public policy,

in favour of commissioned naval officers, but all seizures of this kind by the Marshal of the Court of Admiralty or his deputies or by a custom house or other civil officer of the Crown and even by a governor of a colony went altogether unrewarded ; it was considered as a part of their regular duties, and I am not aware except I think in one instance of any reward having ever been given to any person (other than to a naval officer) for a service of this description.

It was, however, otherwise with regard to seizures effected by civil officers during hostilities. In a state of war no ship belonging to the enemy would venture to enter the ports of this kingdom under her true national colours. If she came at all, she would come under the disguise of a neutral or friendly flag, and would avail herself of all the means in her power to conceal her true national character. In such a case no little sagacity would be required on the part of the civil officer to detect the false character of the flag and pass ; possibly also some risk of a condemnation in costs and damages, in case a neutral should have been mistaken for an enemy. Hence we shall find grants occasionally made to the Marshal of the Admiralty and to Custom House officers for captures effected by them *during hostilities*, and where some skill and vigilance had been shown in unmasking the artifices of the enemy. Governors also of colonies and military commanders of forts were in such cases rewarded ; and, of course, King's ships and commissioned naval officers. Privateers, indeed, were not entitled to capture in port, nor could private individuals do so, even in time of war ; but if they gave information which led to the seizure by the proper officer, and to the subsequent condemnation of enemy's property, they occasionally received a reward.

As, however, all seizures in port before hostilities were made for the Crown, and upon condemnation became droits of the Crown ; and as all seizures in port during hostilities were made for the Lord High Admiral, and upon condemnation became droits of Admiralty, the captors could not in either of these cases claim any interest in the prizes ; all such captures were droits and the captors took only such proportion as the Crown thought fit to give them.

## SECTION 2: CAPTURES IN PORT BY SHIPS OF THE ROYAL NAVY BEFORE HOSTILITIES.\*

[We have seen then that for captures in port *during hostilities*, either by King's ships or by the governors or commanders of Colonies, it was usual to grant one moiety of the proceeds to the captors.] Let us now proceed to inquire what was the

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\* In Mr. Rothery's Report this section and the following section were placed after that on seizure during hostilities by ships of the Royal Navy, but in order that the contents of this chapter may be consecutive they have been brought forward.—[EDITOR.]



practice in regard to captures made by ships of the Royal Navy in port under an embargo and before a formal declaration of war.

What was the practice in this respect at the commencement of the present century I am unable to say; I am, however, rather inclined to think that the permission to capture in port under an embargo was not accorded even to King's ships until the Prussian and Danish wars of 1806 and 1807, or that if they did so capture them they received no reward for their trouble. Long before that time King's ships were, as we have seen, permitted to make captures in port *during hostilities*, but I find no instance before the Prussian and Danish wars of any reward having been granted to a King's ship for a seizure in port *before hostilities*.

The earliest case of the kind which I find in the Register is that of the Russian ships of war "Spashnoy" and "Wilhelmina" (Warrant No. 295), captured by the Fleet at Spithead on the 2nd of December 1807, and in which the whole proceeds of the ships and cargoes and one-fourth of the specie on board were granted to the captors.

The next case after this of a grant to a King's ship for a capture in port before hostilities is that of the "Crown Prince" (Warrant No. 538), a Danish vessel captured under the embargo on the 16th day of August 1807 in the port of Southampton, by His Majesty's Ship "Royal William." In that case the Crown granted one moiety of the proceeds as it had done in case of captures in port by King's ships *during hostilities*.

Numerous other cases of a similar description follow, and in all of which one moiety of the proceeds was granted to the captors. I will mention a few of them.

Thus the Prussian vessels "Vrow Merika" and three others (Warrant No. 660), captured on the 6th of April 1806 by the Fleet at the Nore.

The "Elizabeth" (Warrant No. 718), a Danish vessel captured in August 1807 under the embargo by the Fleet in Plymouth Harbour.

The Prussian vessels "Jonge Ebeling" and two others (Warrant No. 821), captured under the embargo by H.M.'s ships in the Port of Leith.

The American ship "Forrester" (Warrant 861), captured on the 1st of August 1812 by H.M.'s ships in Sheerness Harbour.

The American vessel "Frances Ann" (Warrant No. 927), captured in August 1812 under the embargo by H.M.'s ship "Adamant" in the port of Leith.

Many other cases might be cited from the accompanying Register, and in every case, without exception, the Crown gave a moiety of the proceeds to the captors.

### SECTION 3: CAPTURES IN PORT BEFORE WAR BY COMMISSIONED NAVAL OFFICERS LIVING ON SHORE.

And here I will call your attention to two or three cases of a very interesting description, and in which the principles upon which the Crown made its grants in regard to captures in port are so clearly stated that I may be pardoned if I quote them at some length.

The first cases to which I will refer you are those of the "Haabet's Anker" and "Industry" (Warrant No. 571), two Danish vessels captured in the harbour of Belfast on the 31st of August 1807, and in pursuance of the order of embargo against Denmark, by Edward Sneyd Clay, Esquire, captain in the Royal Navy and the regulating officer of the port of Belfast for the time. On the breaking out of the war with Denmark these vessels were condemned as droits to the Crown, and on a memorial being presented by Captain Clay for a portion of the proceeds, the King's Proctor in his report thereon, dated the 31st of May 1810 (Treasury No. 6182), observed, "that the detention of vessels in port is in many cases rather a civil restraint than an act of force, and belongs accordingly to the office of the Marshal of the Admiralty, and to other descriptions of civil officers who are not usually rewarded in that exercise of their duty, where no circumstance of special vigilance and discovery resulting therefrom occur. At the same time an exception has prevailed in favour of commanders of His Majesty's ships making such seizures founded partly, perhaps, upon the rule observed with respect to droits of Admiralty and partly on views of public policy, which might not operate in other cases. The case of the present memorialist is to be assimilated rather to those of other naval officers than to seizures of a civil description. He was employed in the naval service of the Admiralty although not in the command of any particular ship. It appears, therefore, to His Majesty's Advocate that it would be advisable to grant one moiety of the proceeds as a fit remuneration to the memorialist agreeably to what has been done in other instances, to be distributed according to the Proclamation existing at the time of capture, and subject to the provisions of the Prize Act, &c." And accordingly a warrant for one moiety of the proceeds was issued.

The same course was adopted in the case of the Prussian galliot "De Hoop" (Warrant No. 1128), captured by the same officer in the harbour of Belfast on the 10th of April 1806, under the embargo against Prussia.

I will now call attention to the cases of the "Gamlo Norge," "Europa," and "Arendahl" (Warrant No. 678), three Danish vessels seized on the 6th September 1807 in the port of Limerick, under the order of embargo against Denmark, by Captain Warburton, of the Royal Navy, regulating officer at

that port. These vessels having been subsequently condemned as droits to the Crown, Captain Warburton presented a memorial on behalf of himself, Lieutenant Moore, and the several other persons in the regulating service under his command for a portion of the proceeds, and upon these being referred to the King's Proctor, that officer considered it to be his duty to write to the Collector of the Customs at Limerick on the subject, the master of the "Arendahl" having sworn in his evidence "that his ship had been first seized by the collector." The recommendation of the King's Proctor, expressed in his report of the 22nd April 1811 (Treasury No. 4601), "was that it will be proper to grant a moiety of the proceeds of the 'Gamle Norge' and 'Europa,' now in the registry of the Court of Admiralty, to be divided amongst the commander, officers, and crew employed on the impress service at Limerick who appear to have been the seizors of these vessels in port, and to direct the distribution to be made according to the scale proposed by the petitioners. That as the 'Arendahl' appears by the depositions, which have been communicated to the petitioners and are not contradicted, to have been under detention of the collector of the Customs at the time, when the asserted seizure was made by Lieutenant Moore, the petitioners will not be entitled to any remuneration out of the proceeds of that vessel agreeably to what has been done in other similar cases." Accordingly a Warrant (No. 678) was, on the 11th June 1811, issued granting one moiety of the proceeds in the "Gamle Norge" and "Europa," but nothing whatever was granted in the case of the "Arendahl."

Thus, then, we see that the uniform practice in regard to captures in ports, whether the same occurred before or after hostilities, was to grant one moiety of the proceeds when the seizure was effected by a King's ship or a commissioned naval officer. And that the same indulgence was extended to the Governors and military commanders of Colonies, but only when the capture took place during hostilities.

The ground upon which a moiety was granted in all these cases was founded, as the King's Proctor expresses it in his report, on the case of the "Haabets Anker" and "Industry" above referred to, probably upon the rule observed with respect to "Droits of Admiralty," or, as it is sometimes called, on the old law of the Admiralty.

It would seem from some passages out of the Black Book of the Admiralty which are quoted in the case of the "Acquila" \* that the old practice in regard to droits of Admiralty was for one moiety of the property to go to the Lord High Admiral and the other moiety to the finder or seizor. This practice was, as we have seen, first adopted in regard to captures in port by King's ships *during hostilities*, which upon condemnation

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\* *Acquila*, 1 C. Rob. 37.

became droits of Admiralty, and would thus be very naturally extended to captures by the same vessels *before hostilities*, although upon condemnation they became droits of the Crown.

#### SECTION 4: SEIZURES DURING WAR BY SHIPS OF THE ROYAL NAVY.

Let us now consider the case of captures by ships of the Royal Navy in port during war.

The earliest case of the kind which I have met with is that of the "Sally" (Warrant No. 18), captured on the 20th of September 1795 during the war with France, on the ground that she was engaged in the contraband trade with that country. She was seized by H.M.S. "Plumper" in the *Roads of Jersey*, and was condemned as a droit of Admiralty, and upon an application by the captors for a grant, the King's Proctor, in his report thereon of the 3rd of November 1797 (Treasury No. 3674), observes, "that having consulted His Majesty's Advocate-General thereon, it is our joint opinion that all expenses, which either the memorialists or His Majesty's Procurator-General may have incurred respecting this case should first be directed to be paid out of the proceeds of this droit. And afterwards we humbly conceive that it might be proper to grant one moiety of the net proceeds to the captors." Accordingly a moiety was granted.

The next case which we find in the register is that of the "Pinnenberg" (Warrant No. 36), seized on the 3rd of January 1797 during the war with France, on the ground that she had false papers and covered enemies' property. She was captured in the *Roads of Plymouth* by H.M.S. "Raisonné," and was subsequently condemned as a droit of Admiralty. On an application being made by the captors for a grant out of the proceeds, the King's Proctor, in his report of the 11th of August 1800 (Treasury No. 3131) observes, "that, considering this was a seizure in port without any merit attending it, there appears no ground to depart from the rule which has usually been observed in granting rewards for such services, and therefore the grant of a moiety will be a proper reward to the captors subject to a proportion of the expenses on the part of Government." Accordingly on the 7th of October 1800 a warrant was issued granting one moiety of the proceeds to the captors.

Shortly afterwards, on the 19th January 1801, another warrant (No. 39) was issued granting a moiety of the proceeds in the case of a vessel called the "Indian Chief." This vessel had been captured on the 1st day of November 1797 by H.M.'s ship "Virginie" in Cowes Roads on suspicion that she was illegally trading with the enemy, and was subsequently condemned as a droit of Admiralty. On an application being made by the captors for a grant, the King's Proctor, in his report dated the 7th of August 1800 (Treasury No. 3089), quoting the



opinion of His Majesty's Advocate on the case, observes :—" I understand upon enquiry that it has been usual to grant to His Majesty's ship by whose vigilance droits of Admiralty have been discovered and secured, a moiety of the net proceeds. Whether on account of the magnitude of the present property, which amounts to upwards of 40,000*l.*, their Lordships should think a less proportion sufficient seems to me a point that is proper to be referred to the discretion and judgment of their Lordships." Their Lordships, however, it appears, did not think proper to deviate from the general rule laid down in these cases, and granted one moiety to the captors.

The next case, to which I will call your attention, is that of the "*America*" (Warrant No. 118), captured on the 16th day of April 1749 off Dartmouth and within Admiralty waters by H.M.'s cutter "*Pigmy*." She was at the time sailing under Danish colours, but the captor detained her on suspicion of her having enemies' goods on board. The ship and freight were restored, but the cargo was condemned as a droit of Admiralty ; upon which a memorial was presented by the captors, in which they stated, "that in the seizure and detention of a ship and cargo, which is clearly the property of an enemy, no risk whatever is incurred ; but in the present case the ship was under Danish colours, the whole of the property was claimed as neutral, and the said Lieutenant Shephard as the seizing officer was ultimately responsible for all the consequences of such seizure, notwithstanding the nature of the proceedings vested in His Majesty, whatever portion of that property might be confiscated." The King's Proctor, in reporting on this case on the 11th of June 1805 (Treasury No. 3186), observed, that a grant of the moiety of the net proceeds, "after payment of all expenses on the part of His Majesty's Government will be a fit remuneration to the captors." And accordingly that proportion was granted to them.

Other cases of the same description follow, as for instance :—

The "*Neptunus*" (Warrant No. 244), a French ship captured on the 12th of November 1804 in Whitstable Bay, by H.M.'s ship "*Broderschap*."

"*La Bourse*" (Warrant No. 772), also a French ship captured on the 18th of January 1811 in the Port of Harwich by H.M.'s ship "*Kite*."

And the "*Haabet*" and two other prizes (Warrant No. 1106), captured in August 1812 at Heligoland by H.M.'s ship "*Breodagern*."

In all the preceding cases the prizes were condemned as droits of Admiralty, the captures having been made in port during hostilities, and the captors in each case received one moiety of the proceeds.

There are indeed some few, though very few, exceptions to be found in the register, and which may be readily accounted

for. As for instance, in the case of the "Lady Walterstroff" (Warrant No. 29), a French vessel seized by five of H.M.'s ships in the harbour of Port Royal, Jamaica, and in which case the Crown gave two-thirds of the proceeds to the captors. In that case, however, the vessel had at first been condemned to the captors by the Vice-Admiralty Court at Jamaica, and it was only afterwards that the decree was amended, upon its having been discovered that the condemnation should have been to the King in his Office of Admiralty. It was probably on this ground, and perhaps also because of the number of captors and the greater chance of the ship escaping from a colonial port like Port Royal, had the King's ships not been there, than from a port of the United Kingdom, that a larger proportion than ordinary was given.

Likewise also in the case of the "Graf Bernstorff" (Warrant No. 57), a Dutch vessel captured by H.M.'s ship "Seine" in the British Channel, but within Admiralty waters, and therefore condemned as a *droit* of Admiralty. It was doubtless on the ground that the capture was rather a capture at sea than an ordinary detention in port that two-thirds of the proceeds were in this case granted to the captors.

On the other hand in the case of the "Johanna Elizabeth" (Warrant No. 59), where the capture had occurred at the Nore, and where the proceeds amounted to 13,597*l.* 14*s.*, the Crown considered one-third to be a sufficient remuneration for the captors.

Thus then we see that for seizures effected by ships of the Royal Navy in port during war, it was the general practice to grant one moiety of the proceeds to the captors.

Let us now consider the case of captures in port during hostilities by governors of colonies or military commanders of forts.

It has been already observed that these officers do not appear to have been rewarded, as we shall hereafter find ships of the Royal Navy to have been, for captures effected by them in pursuance of an order of embargo. Where, however, the capture took place in time of war, and where consequently some degree of skill, sagacity, or courage would be required for the performance of the service, in such cases they appear to have been always rewarded with a moiety of the proceeds.

Thus, in the case of the Dutch vessel "Rensborg" (Warrant No. 100), captured on the 9th of July 1798 in the Roads of St. Helena by the governor, officers, and men of the garrison of St. Helena and the East India Company's ship "Royal Admiral."

The Dutch ship "Copenhagen" (Warrant No. 154), captured on the 23rd of July 1799 at St. Helena by the governor and garrison of St. Helena and the East India Company's ships "Glatton" and "Georgina."

The "Batavia" (Warrant No. 171), captured on the 22nd of August 1803 at St. Helena by the governor, officers, and men of the garrison of St. Helena and the East India Company's ships "Minerva," "Baring," and "United Kingdom."

The Danish ship "Louisa" (Warrant No. 712), captured in December 1807 in the Roads of Goree by the commandant and garrison of Goree.

The "Fortuna" (Warrant No. 746), captured in April 1806 at the Cape of Good Hope by command of the governor of that place.

The Spanish vessel "Esperanza" (Warrant No. 817), captured in July 1806 in the Roadstead of Buenos Ayres by the governor and garrison of Buenos Ayres.

The French vessel "Stephanie" (Warrant No. 828), captured at Martinique by the officers and men composing the garrison of Fort Trinité in Martinique.

The Russian vessel "Donna Luzia" (Warrant No. 976), captured in the Roads of Goree by the commandant of that place.

And the Dutch vessel "L'Assum" (Warrant No. 1014), captured on 1st of April 1811 by the commander and garrison of the Fort in the Island of Ternate.

In all the above cases the captures having been made in port during hostilities the prizes were condemned as droits of Admiralty, and in each case the captors received a grant from the Crown of one moiety of the proceeds.

#### SECTION 5: SEIZURES DURING WAR BY CUSTOM HOUSE OFFICERS AND OTHERS.

It now only remains to be considered what was the reward usually granted to Custom House and other civil officers for seizures made by them in port during hostilities, where any particular vigilance or sagacity had been shown, or to private individuals for information, which had led to the seizure and subsequent condemnation of any enemy's property. For seizures made by these persons under an embargo we have already said that no reward was given.

The earliest case which I find is that of the French prize the "Hannah" (Warrants Nos. 7 and 8), captured in the harbour of Kinsale in Ireland by Lieutenant Browne, the governor of that place, and in which 2,273*l.* 12*s.* 10*d.* was given to the said Lieutenant Browne out of the proceeds of the cargo "as a gratuity and for the charges and expenses incurred by him in the said seizure and condemnation," and 1,000*l.* to a Mr. Richard Hodgson Cox "as a gratuity for the information given by him, in consequence whereof the said cargo was seized and condemned." We have, however, no information as to the value of the proceeds in this case, and cannot therefore form any notion what proportion of the proceeds was considered to be an adequate reward to the seizors.

The same may be said of the next case, the "Molly" (Warrant No. 12), captured under the same circumstances, and in which the Crown gave to the seizors 620*l.* 2*s.*, that is to say, 120*l.* 2*s.* for expenses and 500*l.* as a reward.

The first cases, however, in which we find any definite proportion of the proceeds granted in cases of this description are those of the "Jonge Nelke," "Veenvrught," "Johanna Elizabeth," "Clarissa," and other prizes (Warrants Nos. 15, 23, 37, and 42), all condemned under the same circumstances, and in all of which the same individual was the informer.

The Rev. William Barker Daniel,\* of Ramsgate, the well-known author of "Rural Sports," and a gentleman perhaps more remarkable for his sagacity and acuteness than for any great attention to his clerical duties, had, it appears, turned his particular attention to the discovery of the fraudulent practices of privateers, which would seem to have been by no means uncommon at that period. Let us take for example the case of the "Johanna Elizabeth" (Warrant No. 23). This vessel had been captured in July 1796 by the privateer "Friendly," and the property having been proved to be Dutch, it was condemned as prize to the privateer, this country being then at war with the United Provinces. Mr. Daniel, however, it is said, by great exertions and at some expense, ascertained that the privateer was extensively engaged in carrying on the contraband trade, and that she was consequently not entitled to derive any benefit from her letters of marque, which had been procured chiefly for the purpose of carrying on the contraband trade more securely. Mr. Daniel accordingly communicated with H.M.'s Government on the subject, and a promise was then given to him by Mr. Nepean with the sanction of the Earl of Spencer, that if he succeeded in establishing the irregular conduct of the privateer, and obtained the condemnation of the proceeds as a *droit* of Admiralty, "he should receive one-third of the value of " the property condemned, subject to the opinion of H.M.'s " Chancellor of the Exchequer whether he should not receive a " moiety." The ship and cargo had, it appears, been already condemned to the privateer by the Court of Admiralty; but upon a special motion to the Lords of Appeal in Prize Causes, and on a statement of all the facts of the case, the former decree was reversed, and ultimately the property was condemned as a *droit* of Admiralty. A memorial was then presented by Mr. Daniel, claiming the performance of the promise which had been made to him that he should have one-third part of the net proceeds or "such further sum as to your Lordships may seem meet." And upon its being referred as usual to the King's Proctor, that officer in his report, dated the 20th February 1799 (Treasury No. 580), observed, "that " considering the expediency of encouraging the detection of

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\* 1753—1833. "Rural Sports" was published in 1801.



“frauds of the description stated in the memorial, and that by the exertions of Mr. Daniel the ship and cargo in question were obtained for the Crown, a grant of one-third part of the net proceeds will not be an improper compensation to Mr. Daniel for his services.” And accordingly the Warrant (No. 23) for that proportion was issued to him.

The case of the “Clarissa” and other prizes (Warrant No. 37) was very similar. In that case Mr. Daniel had discovered that the privateer “Daphne” by whom the captures had been made, was engaged in the contraband trade, “and that the owners had procured letters of marque for the said vessel the more effectually to carry their plans into effect, to defraud the revenue.” Accordingly on the information thus afforded by Mr. Daniel the whole of the prizes taken by the “Daphne” were ultimately condemned as droits of Admiralty. And upon a memorial from Mr. Daniel the Crown gave him one-third of the proceeds, the warrant stating that “grants to that extent had already been made to him in other instances.”

Indeed so highly do Mr. Daniel’s services appear to have been valued by H.M.’s Government that not long afterwards he received a further grant of 1,000*l*. (Warrant No. 42) for the expenses incurred by him in procuring the condemnation of the above vessels as droits of Admiralty.

The next case to which I will call your attention is one more nearly resembling those which occurred during the late war with Russia, it is that of the “Acquilla” or “Aquila”\* (Warrant No. 30). It is the same case to which I have already referred, and in which Lord Stowell delivered his celebrated judgment in regard to property found derelict at sea.

The “Aquila” had been found derelict by a small coasting vessel belonging to the port of Milford, and had been brought into a creek called Port Clain in Pembrokeshire. There she was immediately taken possession of by Mr. John Philip Adams, the agent for Admiralty droits at Pembroke, who appointed Mr. James Jones to look after her, the place, as it would seem from Lord Stowell’s judgment, being notorious for the wrecking propensities of its inhabitants. Upon a claim having been given in for the ship and cargo as Swedish property, the ship was restored on payment of an adequate salvage to the salvors, but the cargo was still detained on the information furnished by Messrs. Adams and Jones, who suspected that it was Dutch property, and that its true destination was Amsterdam and not Hamburg as alleged. This fact was ultimately established, and the Court then condemned the cargo as droits of Admiralty, awarding two-fifths of the proceeds to the original salvors. A memorial was then presented on behalf of Messrs. Adams and Jones for a grant out of the proceeds on the ground that it was through their exertions alone that the property had been con-

demned as a droit of Admiralty, and accordingly a grant of one-fifth of the proceeds was made to them, the warrant stating " that, although the said John Philip Adams and James Jones " are not to be considered as salvors, but as the agents of the " Admiralty in the care and custody of the property, yet having " been particularly active in the discharge of their duty, and " having been in a great degree instrumental in detecting the " fraudulent covering of the property of the enemy, they conceive " that one-fifth of the remaining sum of 5,761*l.* 17*s.* 1*d.* would " be a proper reward to the persons above mentioned for their " services, of which one-fifth three-fourth parts should be paid " to Mr. Adams and one-fourth part to Mr. Jones."

The next case is also not unlike those which occurred during the late Russian war, it is that of the "*Andromache*" (Warrant No. 47) seized in the port of Cowes by the collector, comptroller and tide surveyor of Cowes. It appears from the warrant that this vessel, the "*Andromache*," put into the port of Cowes bound, as appeared from the master's statement, from Bordeaux to Hamburg. After remaining in Cowes Roads for some 10 days or for a fortnight, during which time the wind was occasionally fair for prosecuting her voyage to Hamburg, the collector and comptroller at Cowes began to entertain some suspicion as to the voyage on which the ship was bound, and having soon afterwards discovered that her master had engaged a pilot to take her to Guernsey, they at their own risk and expense seized her. After various proceedings in the Court of Admiralty, the ship and part of the cargo were restored, but other parts of the cargo were condemned as enemy's property and as droits and perquisites of Admiralty. The property so condemned after payment of all expenses netted the sum of 1,398*l.* 11*s.* 3*d.*, and on a memorial from the seizing officers the Crown gave them 150 guineas, or about one-ninth of the proceeds.

The next case to which we come is a seizure by the very same officers, the collector, comptroller and tide surveyor of the port of Cowes. The case is that of the "*Juffrow Alida*" (Warrant No. 54). It appears that on the 5th of January 1798 a hoy under neutral colours, which proved to be the "*Juffrow Alida*," was observed to be sailing within the Isle of the Wight to make her passage through the Needles; whereupon she was boarded by a tide surveyor belonging to Cowes and was brought to anchor in the Roads. On these proceedings being reported to the collector and comptroller of the customs there, they required the master to produce his papers and finding that the vessel was bound from Amsterdam, one enemy's port, to La Rochelle, the port of another enemy, they determined upon seizing her, and ultimately a portion of the cargo was condemned as droits of Admiralty and realised the sum of 409*l.* 4*s.* 8*d.* net after payment of all expenses. The captors in memorialising the Lords of the Treasury for a grant, stated that they "flattered themselves that they were not devoid of

merit in the business." The King's Proctor in his report of the 3rd March 1803 (Treasury No. 892) on this case observed that, "in conformity with what had been done in other cases " under similar circumstances, the sum of 100 guineas might " not be an improper reward to be granted," and accordingly a grant to that extent was made by their Lordships. So that in this case the seizors got about a fourth of the proceeds.

In the next case of this kind a grant was made to the Marshal of the Court of Admiralty. This was the case of the "*De Jonge Helena*" (Warrant No. 56). It appears from the warrant in this case that the "*De Jonge Helena*" had arrived in the River Thames in the month of March 1798, from Dortrecht in Holland, laden with a cargo of oats, and having delivered them she was about to proceed to Flushing. The Marshal of the Admiralty, however, suspecting that she had false papers and was in reality Dutch property, seized her, and proceedings having been commenced against her, she was ultimately condemned as a droit of Admiralty. An application was thereupon made by the Marshal for a grant out of the proceeds and accordingly the whole of the proceeds, which amounted only to 17*l.* 9*s.* 8*d.*, were granted to him, the warrant stating that "considering the smallness of the proceeds " remaining in this case and that the law charges and other " expenses are to be deducted therefrom and having reference " to the decision of the Court in the case of the '*Nicolaos*,' it " may not be improper to grant the whole proceeds, after payment of the aforesaid charges and expenses, as a reward to " the Marshal." I should add that it appears from the ledgers in this office that the law charges and other expenses amounted to 85*l.* 12*s.* 2*d.*; so that the Marshal in fact only received the sum of 87*l.* 17*s.* 6*d.*

The case of the "*Nicolaos*" above referred to is probably one of which I find an account given in the ledgers of this office. There does not appear to have been any warrant in this case, but the grant was made under a decree of the Court of Admiralty. The proceeds it appears, amounting to 164*l.* 17*s.* 1*d.*, were brought into the registry in the year 1790. Out of these were first paid the law charges and other expenses, amounting to 96*l.* 13*s.* 4*d.*, and the balance 68*l.* 3*s.* 9*d.* was in May 1803 paid to Samuel Humphreys Pellew, Esquire, the non-commissioned captor, and who was at that time, I believe, the collector of the customs at Falmouth, and the same gentleman to whom a grant was made in the case of the "*Nancy*" hereinafter mentioned. I know nothing, however, of the circumstances of the case of the "*Nicholaus*."

The next case is likewise one in which a grant was made to the Marshal of the Court of Admiralty. It is that of the "*Berlin Johannes*" (Warrant No. 77). It appears from the warrant in this case that the Marshal of the Admiralty had received information that the "*Berlin Johannes*," then lying in



the River Thames, which had arrived from Rotterdam with a cargo of Geneva, was enemy's property. He accordingly seized her, but at that time the greater part of the cargo had been discharged. Proceedings were commenced in the Court of Admiralty, when it transpired that the ship had formerly belonged to British subjects; and it was accordingly restored to them on payment to the Marshal of one-sixth part of the value, that being the usual proportion paid to non-commissioned persons in cases of recapture. The cargo, however, proved to be enemy's property, and was accordingly condemned as droits of Admiralty, and, on being sold, realised the sum of 504*l.* 9*s.* 7*d.* This warrant grants to the Marshal one-sixth of the proceeds "as an encouragement for his vigilance and attention."

The next case also, that of the "Trois Frères" (Warrant No. 91), was one in which a grant was made to the Marshal of the Court of Admiralty. It appears from the papers in the case that, on the breaking out of the war with France in May 1803, the Marshal of the Admiralty obtained certain information respecting a vessel "called the "Trois Frères," then lying in "the port of London, where she had delivered a cargo from "Dunkirk, which induced him to seize her. After surmounting "many difficulties he procured the ship's papers to be "delivered up and part of the ship's crew to attend and "undergo their examinations on the Standing Interrogatories "in order that proper steps might be taken for bringing the "said vessel to adjudication." The vessel proved to be enemy's property and was accordingly condemned as a droit of Admiralty, and realised the sum of 274*l.* 12*s.* 4*d.* after payment of the Admiralty Proctor's expenses. On an application being made by the Marshal for a grant out of the proceeds, the King's Proctor, in his report of 15th February 1805 (Treasury No. 821), observed that in the opinion of the King's Advocate, "100 guineas would be a fit reward to the Marshal," and accordingly a grant of that amount was made, thus giving the seizor rather more than a third of the net proceeds.

The next case was that of a seizure effected at about the same time at Ramsgate. It is that of the French vessel "Marie Anne" (Warrant No. 97). It appears from the King's Proctor's report in this case, bearing date the 26th of February 1805 (Treasury No. 1028), "that on the breaking out of hostilities "with France on the 16th May 1803 John Friend of Ramsgate, "in the county of Kent, shipbuilder, having obtained information that a ship called the "Marie Anne" (then under "repair in his own yard at Ramsgate), and certain parts of the "cargo thereof, which had been landed and deposited in ware-houses, were French property, seized the said ship and goods "as being the property of His Majesty's enemies, and with "great difficulty obtained the papers and documents belonging "to the ship and cargo from the merchants, in whose hands the



“ same had been deposited, and took the master and other  
 “ necessary witnesses to Deal and caused them to undergo their  
 “ examinations before the proper commissioners there, in order  
 “ that the said ship and goods might be legally brought to  
 “ adjudication.” The result of these proceedings was that the  
 ship and cargo were condemned as droits of Admiralty, and  
 after payment of all expenses realised the sum of 2,667*l.* 1*s.* 8*d.*  
 Upon an application being subsequently made for a grant the  
 King’s Proctor reported “ that a grant of 400*l.* would be a  
 liberal reward to Mr. John Friend for his services.” Accordingly  
 a grant to that extent was made, thus giving the seizor some-  
 what less than one-sixth of the proceeds.

The next case is a rather remarkable case. It is that of  
 “ *Les Trois Amis* ” (Warrants Nos. 110 and 111). It appears  
 from the warrants in this case, as well as the King’s Proctor’s  
 report thereon bearing date the 7th of June 1805 (Treasury  
 No. 3,112), that the “*Trois Amis*” had imported into this  
 country some safflower as the growth of France, but it proving  
 on inspection to be the produce of Turkey, she was on the  
 22nd April 1803 seized by Richard Troughton, landing  
 surveyor and P. constable, land waiter at the port of London,  
 for a breach of the Navigation Act. Applications were made  
 by the broker for the ship, Mr. John Hall, for the release of  
 the ship, but without effect, and at length, on his admitting the  
 legality of the seizure and consenting to the condemnation of the  
 safflower, it was agreed that the vessel should be restored on a  
 satisfaction being made to the seizing officers. In the mean-  
 time, however, war having been declared against France, and  
 an embargo having been laid on all French vessels, the Deputy  
 Marshal of the Court of Admiralty seized the ship as being  
 French property. Mr. John Hall, however, insisted that she  
 was Danish property, and in support of his demands produced  
 among other documents an assignment of the ship to Johann  
 Diedrich Appel of Altona, mariner, and a letter of attorney from  
 the said Johann Diedrich Appel empowering the said John Hall  
 to demand and sue for the restitution of the ship. The Marshal,  
 however, having reason to suspect the legality of these  
 documents refused to release the ship, and after diligent search  
 got possession of the ship’s papers, which were in the hands of  
 the said John Hall, and delivered them with a special affidavit  
 of the circumstances to the Admiralty Proctor to enable him to  
 take proceedings against the said vessel, the master and crew of  
 the ship having in the meantime absconded. The Marshal of  
 the Admiralty was at great pains to unmask the whole trans-  
 action, and had obtained evidence showing that the said Johann  
 Diedrich Appel was domiciled at Calais and had married a  
 native of that place, who then resided there. And the result  
 was, that on the 15th June 1804, the vessel and cargo were  
 condemned as droits of Admiralty and, having been sold by  
 decree of the Court, realised after payment of all expenses the

sum of 313*l.* 9*s.* 1*d.* Under these circumstances the Crown was pleased to grant to the Custom House officers a sum of 50 guineas and to the Marshal of the Admiralty the sum of 100 guineas, as rewards for their respective services in the matter. So that the Marshal received about a third of the proceeds as a reward for his exertions and the Custom House officers a sixth for their previous conduct in the matter, and the two together about one moiety.

The next case is that of the "Nancy" (Warrant No. 137). It appears from the King's Proctor's report in this case, bearing date the 23rd of August 1805 (Treasury No. 4,868), that on the 21st June 1798 the collector of the customs at Falmouth seized the American ship "Nancy" on suspicion of her having enemy's property on board. Proceedings were instituted in the Court of Admiralty against her; and the result was that the ship and three-fourths of the cargo were restored, but the remaining one-fourth was condemned as droits of Admiralty. The seisor, in applying for a grant out of the proceeds stated, that "not having received any reward whatever for the service rendered by him in the seizure and detention of the said vessel and cargo, and the subsequent risk he took upon himself by such seizure, humbly hopes and trusts that your Lordships will be pleased to direct such proportion thereof to be paid to him as your Lordships in your wisdom shall under all the circumstances of the case think proper." The net sum realised by the sale of the portion of the cargo condemned after payment of all expenses was 255*l.* 9*s.* 6*d.*, and the King's Proctor stated in his report "that a grant of 70 guineas appears to be a fit remuneration to Mr. Pellew conformably to what has been done in other cases under similar circumstances." Accordingly a warrant issued for that sum, being about one-third of the proceeds.

The next case is that of the "Thomas" (Warrant No. 139). It appears that this ship having put into the River Shannon in distress, being in want of provisions and her crew in a state of mutiny, she was there seized, on the 4th July 1803, by Sexton Baylee, Esquire, Surveyor of the Port of Limerick, and Thomas D. Hunt, Esquire, Surveyor of Inniscattery, in Ireland, on the ground of her having French property on board. It would seem from the King's Proctor's report in this case, dated the 9th August 1805 (Treasury No. 4566), that the captors made great exertions and incurred a very heavy responsibility in procuring the condemnation of this property. That one of them in fact with a body of eight men remained on board for a period of about three months and even accompanied her to London to prevent her escaping to a foreign port. They state, in fact, that their disbursements alone amounted to no less a sum than 500*l.* The result of the proceedings in the Court of Admiralty was that the ship and a part of the cargo were restored, but the remainder, amounting in value to the sum of

3,752*l.* 7*s.* 10*d.*, was condemned as enemy's property and as a droit of Admiralty. Various sums for freight, law charges and other expenses were first paid thereout which reduced the balance to 2,666*l.* 16*s.* On an application from the captors for a grant the King's Proctor observed "that upon consideration of all the circumstances set forth in the memorials, and the detention having taken place at so great a distance from the seat of Government, where the parties incur more risk and responsibility by not being able so immediately to obtain the advice and directions of His Majesty's law officers a reward of 1,000*l.* is submitted as a fit remuneration to be given to the memorialists." So that the seizors in this case received rather more than a third of the net proceeds.

The next case is that of the *Venus* (Warrants Nos. 220 and 221). It appears from the warrants in this case that William Davis, the master of the British vessel "*Venus*," whilst bound on a voyage to Hamburgh with a cargo, which he had taken on board at Genoa and other ports, received information that war had broken out between France and England, and he accordingly put into the port of Plymouth, not only for the safety of his own vessel, but also to ascertain the nature of the cargo which he had on board, and which he believed to be French. He accordingly communicated his suspicions to George Eastlake, the Receiver of Admiralty droits at Plymouth, who ordered the same to be seized. The result was that the ship and considerable part of the cargo were restored, but the remainder of the cargo proving to be enemy's property was condemned as droits of Admiralty and realised the sum of 531*l.* 18*s.* 8*d.* after payment of all expenses. On an application the Crown granted 50 guineas as a reward to the master of the "*Venus*" in consideration of his conduct in the matter, and 100 guineas to Mr. Eastlake in consideration of his having seized the ship and cargo at his own risk. The two grants together were between a third and a fourth of the net proceeds.

The next case is that of the "*Hoffnung*" (Warrant No. 236). It appears that the "*Hoffnung*" was seized on the 24th of March 1804 by the Collector and Comptroller of the port of Ilfracombe on suspicion of her having enemy's goods on board. Proceedings were commenced in the Court of Admiralty, the result of which was that the ship was restored, but the cargo, which proved to be French property, was condemned as a droit of Admiralty. The cargo sold for 780*l.* 4*s.* 3*d.*, and after deducting therefrom the law charges there remained a net sum of 525*l.* 19*s.* 9*d.* at the disposal of the Crown. On a memorial from the seizors the Crown gave them 150 guineas, or not quite one-third of the proceeds.

The next case is that of the "*Maria and Cornelia*" (Warrant No. 369), and it is remarkable as being the only case, so far as I am aware, in which a grant was ever made to a civil officer for a seizure effected under an embargo. But it was a case of so



much merit, and there were in it so many of the circumstances which usually attend a seizure during hostilities that the reason of the exception is at once apparent. It appears that on the 16th of April 1806, soon after the issue of the embargo against Prussia in April 1806, Alexander Hodge, the tide surveyor at Anstruther, observing a vessel which he believed to be Prussian, put out in his boat with a crew of six hands besides himself, and having boarded her brought her into port. On the breaking out of the war with Prussia the ship and part of the cargo were condemned as droits of the Crown as captured before hostilities, and upon being sold realised the sum of 1,068*l.* 17*s.* 2*d.* On a memorial from the seizors for a reward the Crown gave them 200*l.*, or about one-fifth of the proceeds, of which 50*l.* was to go to the master, Alexander Hodge, and 25*l.* to each of the six boatmen.

The next case is that of the Prussian vessel "Minerva" (Warrant No. 681). It appears that this vessel had been originally seized on the 22nd of February 1806 by Robert Redford, the tide surveyor, and the officers of His Majesty's Customs for the port of Newcastle for a breach of the Revenue laws. Pending the proceedings against her, however, war broke out with Prussia, upon which she was condemned as Prussian property captured before hostilities and as a droit to the Crown, and on being sold realised the sum of 460*l.* 12*s.* 7*d.* The seizors memorialised the Crown for a grant out of the proceeds, and accordingly a warrant issued, in which the following passage occurs: "That our said commissioners having submitted unto us that this vessel having been in the first instance under detention for the purpose of prosecution on our Revenue laws, the seizors appear to have an equitable claim upon our bounty for the protection of such interests as the law would have assigned to them on the forfeiture under the original seizure, and have therefore recommended unto us to grant them one-half the proceeds." It would seem therefore that the ground, upon which a moiety was granted in this case, was because that would have been the proportion to which the seizors would have been entitled, had the vessel been condemned for a breach of the Revenue laws, and for which she was originally seized.

The next case is that of the "Apparentia" (Warrant No. 872), a very important case, and the more so as the grant bears date as late as November 1814, quite at the close of our long European wars. It appears from the King's Proctor's report in that case, bearing date the 31st of October 1814 (Treasury No. 16,816) that Mr. Peter Lock, the Principal Surveyor of His Majesty's Warehouse, in the Custom House, London, "in the month of November 1812 seized on board the ship "Apparentia," in the Port of London, certain parts of her cargo which had been illegally imported from Ostend under colour of His Majesty's licence; and that the said



“ goods having been duly proceeded against in the Court of Admiralty were in March 1813 condemned as prize and as droits and perquisites of Admiralty. It also appears that the goods sold for the sum of 615*l.* 17*s.* 11*d.*, and after deducting freight and expenses there remained a net sum of 423*l.* 3*s.* 9*d.* at the disposal of His Majesty. The seizors having memorialised for a grant out of the proceeds, the King’s Proctor, in his report thereon above referred to, stated as follows: “and having deemed it advisable to lay the said memorial before His Majesty’s Advocate General, and to attend and consult with him on the subject, I do, under his advice, most humbly report to your Lordships that it will be proper to grant 100 guineas to the memorialist according to the state of remuneration adopted for similar services in the Nicolaus and other cases of seizure by Custom House officers,” and accordingly a warrant was issued for that amount, being about one-fourth of the net proceeds.

The same proportion, namely, one-fourth of the proceeds, was also given to a Mr. Thomas Stones for the detention of a French ship called the “Clara” (Warrant No. 969) at St. Paul’s, in the Island of Bourbon, although the proceeds amounted to 5,030*l.* 13*s.* 4*d.*, but the case was one of very great merit on his part.

I have now examined in detail every case in the accompanying register which affords any information as to the grants to Custom House and other Civil officers for making seizures in port where any particular vigilance or sagacity had been shown as well as to private individuals for giving information which led to the capture and ultimate condemnation of enemies’ property. They are the only cases in which grants appear to have been made by warrant, or, at least, all in which the warrants have been preserved in this office. That there were some others is, I think, not improbable, as where the grant was made by a decree of the Court of Admiralty at the request of the law officers of the Crown. Such cases were, however, I believe, but few, for, after a careful examination of the Court books and the ledgers of this office for a period of several years from the commencement of the present century, I have only been able to find two.

One of these is the case of the “Mercurius,” a French vessel and cargo captured about December 1796 “by Anthony Triscott, tide surveyor of the Customs at the port of Plymouth, and by James Welch, Henry Pate, William Lane, James Pearse, and Richard Bennett, tide waiters and boatmen at the said port, acting under the command and direction of the said Anthony Triscott.” The ship and cargo were condemned as droits of Admiralty, and upon being sold realised the sum of 1,551*l.* 5*s.* 2*d.* Out of this were first paid certain charges and other expenses which reduced the proceeds to 1,195*l.* 1*s.* 4*d.* On an application being made by the seizors for a grant the

Crown directed the Judge of the Court of Admiralty "to reward the seizors as to him should seem meet." And accordingly on the 7th of June 1803 the judge directed 150*l.* to be paid to Anthony Triscott and 50 guineas to each of the other five seizors, thus giving them rather more than one-third of the net proceeds.

The other case is that of the "*Mater Misericordia*," where the vessel had been seized in the port of Falmouth by Mr. Samuel Humphreys Pellew, the collector of the Customs at that port, and had been subsequently condemned as a droit of Admiralty. The vessel and cargo upon being sold realised the sum of 479*l.* 12*s.* 4*d.* after payment of law charges and all other expenses; and upon an application from the seizors for a grant the matter was referred by the Crown to the Judge of the Court of Admiralty, who on the 20th July 1803 decreed 100 guineas to be paid to Mr. Pellew for his services, thus giving him between a fourth and a fifth of the net proceeds.

Upon a review then of all the cases of this description which I have been able to collect, the following conclusions may fairly be deduced:—

First, that it was not the practice of the Crown in cases of this kind to grant to the seizors when they were entitled to a reward any fixed proportion of the proceeds, as it was wont to do in all other cases. With the exception of the Rev. W. B. Daniel's cases, in which there was a special agreement for a third of the proceeds, and in one or two other instances, the seizors were rewarded with a round sum, having some relation no doubt to the amount of proceeds in each case, but being no fixed or definite proportion thereof.

And secondly, that, with the exception of the "*Andromache*," in which from some cause or other it gave only about a ninth, and of the "*De Jonge Helena*" and "*Nicolaos*," in which on account of the smallness of the proceeds it gave the whole, the sum usually granted to the seizors varied from about a third to a fourth of the proceeds, although sometimes as in the cases of the "*Acquilla*" and "*Maria and Cornelia*" and "*Mater Misericordia*," they received but about one-fifth, and in the the "*Berlin Johannes*" only a sixth. I might also add that where the proceeds were small, as in the cases of the "*Trois Frères*," "*Les Trois Amis*," and the "*Nancy*," or where the merit had been very great as in the "*Thomas*," about one-third seems to have been given, in other cases the sum granted approached perhaps nearer to a fourth of the proceeds.

I have now, then, in the terms of your letter ascertained what was the practice in former wars "with reference to the distribution of prize money generally, distinguishing the course adopted in regard to captures by ships of war belonging to the King, by private ships of war duly authorised to make captures, by non-commissioned vessels, and also by officers of the Revenue, of Customs or Excise and others," and I have

shown when it was that King's ships and commissioned vessels took the whole benefit of any capture which they might make, and when, on the other hand, the prizes were condemned as droits either to the Crown or to the Lord High Admiral. I have also shown what proportions it was usual to grant out of droits of the Crown and out of droits of Admiralty, when the prize had been taken on the capture of an enemy's fortress or possession, when it was an armed ship of war, when it was captured at sea, and when it was captured in port. And it now only remains to apply the principles which we have thus ascertained to the circumstances of the late war with Russia.

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## CHAPTER IV.

## PRACTICE DURING THE RUSSIAN WAR OF 1854.

The war with Russia of 1854\* differed essentially from most of our previous wars. Not only was it not preceded by an embargo, but, in fact, a delay of six weeks from the date of the declaration of war was allowed "to all Russian merchant vessels" in any ports or places within Her Majesty's dominions" to load their cargoes and depart; and any Russian vessel which, prior to the declaration of war, might "have sailed from any "foreign port bound to any port or place in Her Majesty's "dominions" was to be "permitted to enter such port and "to discharge her cargo, and afterwards forthwith to depart "without molestation."† The result of these measures was that the numerous seizures of enemy's property, which had formerly been made either on the issue of an embargo or on a declaration of war, did not take place in this instance. It is true that an embargo was issued on the same day as the formal declaration of war, but then it was virtually not to take effect for six weeks, thus allowing ample time to all Russian vessels to escape to places of safety.

From these preliminary observations, then, it will be seen that, as we had previously been at peace with all the world, there could in this war be no captures made before hostilities—none of that numerous class of cases which belong to droits of the Crown—but that they must all have been made during hostilities, and subsequent to the formal declaration of war against Russia on the 29th day of March 1854.

The Russian war differed also in another very important respect from those which had preceded it, in that Her Majesty, "being anxious to lessen as much as possible the evils of war, "and to restrict its operations to the regularly organised forces "of the country,"‡ did not issue any letters of marque or commissions to private ships of war. The only commissioned vessels during this war were, therefore, ships belonging to the Royal Navy. All others were non-commissioned, and, consequently, all captures effected by them were, under the Order in Council of 1661–2, liable to condemnation as droits of Admiralty, as likewise were all seizures made in port.

## SECTION 1: SEIZURES BY SHIPS OF THE ROYAL NAVY.

First then as to captures by ships of the Royal Navy, the only duly commissioned captors during the war with Russia.

\* War was declared on 29th March 1854, and peace was signed at Paris on the 30th of March 1856.

† Order in Council, 29th March 1854, Spinks Prize Cases, Appendix, p. iii.

‡ Declaration with reference to neutrals and letters of marque, 28th March 1854, Spinks Prize Cases, Appendix, p. i.



By the Prize Act, Russia,\* and by Her Majesty's proclamation of the 29th of March 1854, it was ordered that the net proceeds of all prizes captured during hostilities by any of Her Majesty's "ships or vessels of war (save and except when " they shall be acting on any conjunct expedition with the " army, in which case Her Majesty reserved to herself the " division and distribution of all prizes and booty taken, &c.)," was, after final condemnation, to be for the sole and entire benefit of the captors. In this respect, then, the practice which had prevailed in almost all our previous wars since the reign of Queen Anne, was adhered to, save that ships of the Royal Navy were alone authorised to make captures.

There is, however, one particular in which the practice during the last war differed from what it had previously been, and which I may as well bring to your notice.

We have seen that in all former wars the captors had been permitted through their agents to retain the prizes in their own possession pending the adjudication, and upon condemnation, they or their agents disposed of them as they thought proper and the proceeds were then distributed amongst the captors.

It was thought, however, on the breaking out of the present war, that that course had sometimes led to serious irregularities, and that it would be better to adopt the practice, which had long prevailed in the United States of America, that of placing all prizes in the custody of some public officer, who would hold the property pending the adjudication for the benefit of the parties who might be ultimately entitled thereto, whether the captors or the claimants. Accordingly, by the provisions of the "Prize Act, Russia" (section 15) it was ordered that all prizes should immediately upon their arrival in port be "delivered up to, and " remain in the custody and care of the Marshal of the Court " of Admiralty or his substitute,"† or, if there were no such officer at the port, then in the custody of the principal officer of the Customs. By a subsequent section (sec. 27) it was provided that, upon condemnation, the prize should be sold by the decree of the Court of Admiralty,‡ and the proceeds be paid into an account at the Bank of England, to be called the Naval Prize Account, and by the 28th section the charges of the Marshal, of the Queen's Proctor, and of the captor's agent were then to be submitted to the Registrar of the Court of Admiralty for taxation; and upon his report the respective amounts, at which they were taxed, were to be paid to them out of the proceeds, and the balance was then to be distributed by the Admiralty to and amongst the officers and crews of the respective capturing ships in accordance with the terms of the prize proclamation.

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\* 17 Vict. cap. 18.

† See Naval Prize Act, 1864, 27 & 28 Vict. c. 25, s. 16.

‡ See Prize Court Rules, 1914, Order XI.

The practice thus laid down by the Prize Act, 1854, in regard to captures by H.M. ships of war has accordingly been acted upon during the Russian war, and the proceeds of all those that have been condemned, either have been, or are now in course of being, distributed by the Admiralty.

There are, therefore, no directions to be given by their Lordships in regard to the captures made by ships of the Royal Navy, nor am I aware that I need say anything further about them. They were all captured at sea, none of them in port; all, therefore, upon condemnation devolved under the proclamation and the Prize Act to the captors, and the proceeds are now being distributed amongst them.

## SECTION 2: SEIZURES BY REVENUE CRUISERS.

But besides the captures by ships of the Royal Navy, there were some captures made at sea at the commencement of the war by Revenue cruisers. A list of these cases, with the names of the capturing vessels and their commanding officers, the persons on whose behalf applications have been made for a grant, and the gross and net proceeds in each case will be found annexed to this Report. The net proceeds resulting from these captures amount altogether to the sum of 10,952*l.* 13*s.* 1*d.* No capture was made at sea by any other description of non-commissioned vessel but a Revenue cruiser.

Now, by the 13th section of the Prize Act, Russia, 1854, it was enacted that "ships, vessels, goods, and merchandise captured by any private ship or vessel, hired by or in the service of Her Majesty's Commissioners of Customs or Inland Revenue, shall belong to Her Majesty in Her Office of Admiralty, and be applied and disposed of in such manner as Her Majesty under Her sign manual shall order and direct after legal adjudication thereof." This was, as we have seen, in accordance with the practice prevailing in former wars.

The considerations which apply to vessels of this description are so clearly stated by Lord Stowell in the case of the "*Helen*,"\* and they appear to me to be so much in point, even in regard to the captures under this war, and to have so important a bearing upon this part of our subject, that I must again quote the passage at length. Lord Stowell, speaking in the year 1801, says, "I remember perfectly well what was the reason for the introduction of this clause. These vessels used occasionally in former wars to provide themselves with letters of marque at their own expense. This was found in some degree inconvenient to the proper service in which they were employed by Government; instead of looking after petty smugglers under their public commission, they

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\* The *Helen*, 3 C. Rob. 224, 1 E.P.C. 299.

“ were looking after rich vessels of the enemy under their  
 “ letters of marque, which entitled them to the whole of the  
 “ benefit of such prizes, though they had been fitted out,  
 “ manned, and armed, not at the expense of the owners, but at  
 “ the expense of that Government which was thus to a certain  
 “ degree defrauded of their proper services. On the breaking  
 “ out of the present war it was deemed advisable to annoy the  
 “ enemy’s commerce upon their own coasts, and to intercept  
 “ the return of their vessels into their own ports, and it was  
 “ thought that these vessels were eminently qualified for this  
 “ service from their intimate acquaintance with the coasts of  
 “ France, and their experience in that navigation. The Govern-  
 “ ment, therefore, directed them to be provided with letters  
 “ of marque for the purpose of enabling them to act hostilely in  
 “ the service required ; but at the same time, to prevent their  
 “ acting without control and with injury to their other public  
 “ duty, reserved the distribution of all prizes taken by these  
 “ vessels to its own discretion. Besides these purposes of  
 “ public policy which this arrangement answered, it had the  
 “ additional advantage of providing a sort of general fund, out  
 “ of which Government might reward, at its discretion, such of  
 “ them as had cruised with merit, but without success.”

And first let me say a word in regard to the general fund here referred to. Although Her Majesty’s Government may have found it necessary in former wars to provide such a fund, so as to enable it to reward the Revenue cruisers according to their respective merits, I hardly think that it would be desirable to adopt the same course in regard to captures made by Revenue cruisers during the late war. The cases of this description were, indeed, too few in the last war to admit of such a course being followed with advantage. And I would, therefore, humbly submit that whatever reward Her Majesty’s Government may be pleased to grant in respect of any of these captures, should be distributed to and amongst the respective captors in each case.

Next, as to the proportion which they should receive out of the proceeds. It is, I think, abundantly clear that Revenue cruisers are not commissioned for the purposes of war, but rather for the purpose of protecting the revenue, moreover, they were not during the late war furnished with any letters of marque. They must, therefore, in regard to any captures which they may have made, be considered as altogether non-commissioned. It is only under the character of “ ships and vessels of war ” that they could claim, under the Proclamation and the Prize Act, to be entitled to the whole proceeds, and I do not think that any of them have as yet made any claim to that character.

Considering then the Revenue cruisers to be non-commissioned vessels, the proportions to which they would be entitled for a

capture effected at sea during hostilities, if the practice of former wars is to be followed (*see* p. 132) would be—

Four-fifths, if the proceeds were under 300*l.* ;

One-half, if between 300*l.* and 10,000*l.* ;

Two-fifths, if between 10,000*l.* and 20,000*l.* ; and

Three-eighths, if above 20,000*l.* ;

and as the proceeds are in each case between 300*l.* and 10,000*l.*, one moiety would seem to be the proper proportion to be granted to the captors for every capture by a Revenue cruiser during the late war.

Memorials have, however, been presented to the First Lord of the Treasury on behalf of Commander Grandy of the Revenue steam vessel “Argus,” and of Commander Hughes of the Revenue cutter “Petrel,” the captors of some of these prizes (and which have likewise been referred to me), praying that they may receive the whole proceeds of any prizes which they may have captured, and that Revenue cruisers may, in regard to the grants made to them for the late war, be treated in every respect as Queen’s ships. The main grounds upon which they rest their application are—

First, that the commanders and other officers of the Revenue cruisers in question are commissioned naval officers ;  
and

Secondly, that Revenue cruisers, although not, strictly speaking, vessels of war, are nevertheless now subject to the orders and directions of the Lords Commissioners of the Admiralty, and received the same orders in regard to the capture of prizes during the late war, as did Her Majesty’s ships and vessels of war.

They might also have added that it was usual in all previous wars to furnish Revenue cruisers, as we have seen, with letters of marque, the effect of which was that the whole proceeds of the prizes made by them *during hostilities* were paid, not certainly to the respective captors, but to a general fund, the whole of which, I have reason to believe, was applied exclusively to the reward of Revenue cruisers. At the same time, however, I should observe that if from any cause whatever a Revenue cruiser was not furnished with a letter of marque, as, for instance, on the breaking out of the French and Dutch Wars of 1803, when there was at first some question on the part of His Majesty’s Government as to whether they should be commissioned or not, any captures made by them during hostilities were condemned as *droits* of Admiralty, and they received, or rather there was paid to the general fund for their benefit, only the proportions to which non-commissioned vessels would ordinarily be entitled for a capture effected at sea.

How far the grounds advanced by the memorialists would justify a departure from the practice of former times and entitle Revenue cruisers to a higher reward than that usually granted to their predecessors is a matter upon which I would not



venture to offer any opinion. It is sufficient for me to state the facts; it will be for their Lordships to determine what, upon consideration of all the circumstances of the case, it will be most proper to do.\*

### SECTION 3: SEIZURES IN PORT BY CUSTOM HOUSE OFFICERS AND OTHERS.

We now come to the seizures made in port during the Russian War of 1854.

From what has been already said in regard to the peculiar character of the embargo issued on that occasion and the great indulgence extended to Russian vessels, it will naturally be concluded that there were none of that class of captures which were so numerous on the breaking out of previous wars, none of those easy seizures in port of vessels avowedly enemy, and for which no reward was ever granted to the seizing officers. And this was in fact the case.

All Russian vessels, then, having had ample time afforded them to quit the ports of this country and to get into places of safety, the only seizures of enemy's ships which were made in port occurred some time after the breaking out of hostilities, and in every case, without exception, the vessel was under the neutral flag and pass, so that it required no little vigilance and sagacity to detect the fraudulent covering of the enemy. All were cases of the same description entitling the seizors to a grant out of the proceeds; all were, I believe, without exception, very strongly contested by the agents in this country of the several Russian owners, and I may add that I should be at some loss to say in what respect any one of them differed from another on the score of greater or less merit. Annexed is a list of all the cases in which the prizes have been finally condemned, showing their names, the ports at which they were seized, the names of the persons appearing on the proceedings to be the capturing officers, the persons from whom memorials have been received, the gross proceeds and the net proceeds in each case. I have also added the names of those prizes which have been condemned and sold by the Court of Admiralty, but in which appeals are now pending.

Now the cases in previous wars which appear to me to bear the nearest resemblance to those which have occurred during the late war are—

Mr. Daniel's† cases: The "Jonge Nelke," "Veenorught," "Johanna Elizabeth," "Clarissa," and others (Warrants Nos. 15, 23, and 37), and in which one-third of the proceeds was given by previous agreement, the proceeds being very large; the "Aquila" (Warrant No. 30), in which one-fifth was given, the proceeds being 5,761*l.* 17*s.* 1*d.*; the "Juffrow Alida" (Warrant No. 54), in which about one-fourth was given, the proceeds

\* See note at end of this chapter.

† See *ante*, p. 122.

being 409*l.* 8*s.* ; the "de Jonge Helena" (Warrant No. 56) and "Nicolaos," in which the net proceeds being only 87*l.* 17*s.* 6*d.* and 68*l.* 3*s.* 9*d.* respectively, the whole was granted.

The "Trois Frères" (Warrant No. 91), in which rather more than one-third was given, the proceeds being 274*l.* 12*s.* 4*d.*

"Les Trois Amis" (Warrant No. 110) in which about one-third was given to the marshal, the proceeds being 313*l.* 9*s.* 1*d.*

The "Nancy" (Warrant No. 137), the "Venus" (Warrant No. 220), and the "Hoffnung" (Warrant No. 222), in which the net proceeds were respectively 255*l.* 9*s.* 6*d.*, 531*l.* 18*s.* 8*d.*, and 525*l.* 19*s.* 9*d.*, and in each of which cases between one-third and one-fourth of the proceeds were given.

The "Apparentia" (Warrant No. 872) in which the proceeds were 423*l.* 3*s.* 9*d.*, and in which about one-fourth was granted.

And the "Mater Misericordia," in which the proceeds were 479*l.* 12*s.* 4*d.*, and in which less than one-fourth was given.

On a review, then, of all the preceding cases it may, I think, be safely affirmed that the sum usually granted in former wars in cases of this description varied from between a third to a fourth of the proceeds ; for the case of the "Thomas" (Warrant No. 139), in which rather more than one-third was granted, the net proceeds being 2,666*l.* 16*s.*, was one of very extraordinary merit, and in which the seizers had been put to very great expenses in securing and obtaining the condemnation of the prize.

At the same time, however, I should observe that in all the cases, in which we find between one-third and one-fourth granted (except indeed in Mr. Daniel's cases, in which one-third was given by previous agreement) the proceeds were comparatively small, varying from 250*l.* to 600*l.* ; and that in the only case in which the proceeds were large, namely, in the "Aquila" (Warrant No. 30), where they amounted to 5,761*l.* 17*s.* 1*d.*, only one-fifth was granted to the seizing officers, although the case was one of some merit.

In the seizures, however, which have been made under the late war, the proceeds are generally large. Taking those cases, which have been finally condemned and in which grants can now be made, we find one case in which the net proceeds are above 6,000*l.*, two in which they are between 3,000*l.* and 4,000*l.*, two in which they are between 2,000*l.* and 3,000*l.*, six in which they are between 1,000*l.* and 2,000*l.*, one in which they are about 967*l.*, and one in which they are only 612*l.*

Looking then to the practice in former wars and to the large amount of the proceeds in each case, which has occurred under the late war, I cannot but think that the seizers will be amply repaid for their trouble if a grant of one-fourth of the net proceeds be made to them in each case, unless, indeed, their Lordships should think it right to make an exception in two cases, by allowing one-third where the proceeds amount to 612*l.*, and only one-fifth where they amount to 6,405*l.* 15*s.* 6*d.*

These are matters entirely for their Lordships' consideration, and upon which I would not presume to offer an opinion.

It will perhaps, however, be said that the seizors are entitled to a larger reward than even that which I have ventured to suggest, on the ground of the risk which they incur of being condemned in costs and damages in case of an illegal seizure; indeed, in some of the memorials, which have been referred to me, that fact is advanced as enhancing the merit of their services. To this I would reply that the risk is but small, as will be seen at once when the course which the proceedings take is explained. The original detention is indeed made by the seizing officer, but there his power ceases; he cannot institute proceedings against the prize in his own name, but must immediately communicate with the Admiralty Proctor, under whose advice either the vessel is at once restored, or proceedings are taken against her. The proceedings in the Court of Admiralty go on in the name of the Lord High Admiral, and are conducted by the Admiralty Proctor, and the prize, if condemned, becomes a droit of Admiralty. It is true that, if the prize is restored, the seizing officer is liable to be condemned in costs and damages; such a condemnation however is, in practice, little more than nominal, for Her Majesty's Government has been wont to relieve the seizer from the payment of all such costs and damages, unless indeed his conduct has been marked by any great impropriety. In fact, Her Majesty's Government has very recently directed the payment of all the costs incurred by the Admiralty Proctor on account of seizures effected during the late war by Custom House officers; and in one case, that of the "Elise," otherwise "Elise Wilhelmine," the Crown has ordered the payment not of the costs only, but of the costs and damages, in which the Court of Admiralty had thought proper to condemn the officers of Her Majesty's Customs at the port of Leith, the seizing officers.

To what then does the risk amount? At the outside, to the cost of the vessel's detention from the time when she is originally seized until the seizing officer can communicate with the Admiralty Proctor, and to the chance of having to pay the costs and damages, in which he may be condemned, in case his conduct has been grossly improper. Such a risk to an intelligent and well-conducted officer is in fact no risk at all.

Before I finally quit this part of my subject, and in order that their Lordships may have the fullest possible materials to form a correct judgment on the amounts proper to be granted to the seizing officers in these cases, I will just call your attention to the practice, which now prevails in regard to rewarding Custom House officers for the seizure of contraband goods. The information which I have on the subject is derived from a work entitled the "General Orders and Minutes of the Board of Customs," edited in 1854, by Mr. T. C. Wildman, of the secretary's office.

It appears at page 377 of that book that on the 14th of April 1853 the Lords of the Treasury passed a minute abolishing for the future all "satisfactions," as they were called, and directing that in all cases in which "fines" or pecuniary mulcts were imposed by the Board of Customs, such as in "detentions" of goods for inaccurate description, wrong denomination, or "non-compliance with the law from inadvertence or negligence"; or where a profit was made from "detentions for under-valuations," all such fines and profits should in future "be paid into a separate fund, and dealt with in the same manner as the fines are in the Inland Revenue Department," viz., distributed amongst the officers periodically"; but that in cases of attempted smuggling, as in seizures on the coast or elsewhere from smugglers, the practice which had hitherto prevailed, should be continued, and that the seizing officer should have a direct and personal interest in the goods so seized, "not only as an inducement to vigilance, but as a reward when it is successful." Accordingly, on the 31st of December of the same year the Board of Customs issued a general order, under the provisions of the 16 & 17 Vict. c. 107, prescribing a certain scale of rewards in lieu of those previously granted to the seizing officers; and at the same time observing that, in adopting that "scale as a general rule, the Board will, on consideration of the circumstances of any particular case, reduce the amount should a smaller award be deemed sufficient to meet the merits of the officer; or, on the other hand, they will increase the award should the facts or extent of the illicit transaction appear to justify it."

The scale which was then laid down was as follows:—

"In the case of spirits, tobacco (excepting segars) and snuff, viz.:—

- |   |                 |
|---|-----------------|
| "If the goods only are seized and condemned . . . . .   | One-fourth.     |
| "If the vessel or means of conveyance is seized and condemned without any person being detained . . . . .                                 | One-third.      |
| "If in addition to the goods and means of conveyance one person (not being all the parties concerned) is detained and convicted . . . . . | One-half.       |
| "If two or more of such parties (not being all) are detained and convicted . . . . .  | Three-quarters. |
| "If all parties (being above the age of 16 years) concerned in the act which occasioned the seizure are detained and convicted . . . . .  | Nine-tenths.    |

"As to all other goods, including segars. If the goods only are seized, one-fourth of the gross proceeds; but if the means of conveyance be seized and condemned, or any party be captured and convicted, one-half of the gross proceeds.



"In the case of vessels and boats, if sold, one-half of the gross proceeds. If taken into the public service or broken up, one-half of the appraised value."

There is also a provision as to the seizure of cattle and carriages, which, however, does not apply.

In considering the preceding scale of rewards it must be remembered that it was prepared chiefly with reference to cases of small value and to seizures attended with danger; and secondly that, although in the case of the Russian prizes "all the parties concerned in the Act," namely, the master and crew, may be said to have been "detained and convicted," yet, that the capture of a smuggler, to which reference is, I presume, chiefly made in the preceding scale of rewards is a service ordinarily attended with some risk, whereas in the seizure of the crew on board the Russian prizes in port no danger whatever was incurred. The cases in the preceding scale, which in my opinion approach nearest to the case of the Russian seizures are those in which one-fourth and one-third of the proceeds are granted to the seizing officers.

Looking, then, to the large value of the proceeds in the case of the Russian prizes and to the fact that the seizures were not attended with any danger, there is nothing in the preceding scale of rewards for the capture of contraband goods, which would lead me to change the view, which I have already expressed, namely, that one-fourth of the net proceeds will be an ample remuneration to the seizing officers, except, perhaps, in the case of the "Christine," in which the proceeds are only 612*l.*, and in which it might perhaps not be improper to grant one-third; and that one-fifth of the net proceeds of the "Kotka," in which they amount to above 6,000*l.*, will also be an ample reward.

Lastly, I would beg to observe that, although in previous wars it was not, as we have seen, usual to grant in cases of this description to the seizing officers a fixed or definite proportion of the proceeds, as was done in all other descriptions of captures, but rather a sum approximating more or less to one-third or one-fourth of the net proceeds. I would respectfully submit for their Lordships' consideration whether it would not be better, in making the grants on account of the late war, to give to the seizing officers a definite proportion of the proceeds rather than a lump sum, as being in accordance with the practice now prevailing in regard to seizures of contraband articles, and as best tending, in the words of the warrant in the case of the "Henrietta" (Warrant No. 119), "to avoid creating dissatisfaction in the service."

#### SECTION 4: MODE OF MAKING THE PAYMENT.

When, then, their Lordships shall have decided the amounts proper to be granted to the seizors in all the cases in which the prizes have been condemned as droits, it will only remain to

be considered in what manner the payment shall be made, as well in the case of Revenue cruisers as in that of Custom House officers.

By an Order under Her Majesty's Sign Manual, bearing date the 12th of March 1855, the High Court of Admiralty was empowered to sell all the prizes, which were condemned either as droits of Admiralty or as droits of the Crown, and the proceeds were ordered to be paid to the account of the Registrar of the High Court of Admiralty at the Bank of England, subject always to the Order of the 25th of August 1854, by which the Registrar was directed to keep the balance of his account below 5,000*l.*, and to pay over from time to time any excess beyond that amount to Her Majesty's Paymaster General.\* Accordingly all the prizes seized as well by Revenue cruisers as by Custom House officers during the late war, and which have been condemned as droits of Admiralty, have been sold under the decree of the Court of Admiralty, and the proceeds have been paid to the account of the Registrar at the Bank of England. The sums thus paid in have thus for the time being become a part of the funds of the Court of Admiralty, out of which payments have from time to time been made to the account of Her Majesty's Paymaster General, amounting altogether to 58,413*l.* 3*s.* 11*d.*, and which sum he now holds to the credit of the Court of Admiralty.

The course adopted in previous wars in regard to the proceeds was not very unlike; then all prizes condemned either as droits of Admiralty or as droits of the Crown were likewise sold by the Court of Admiralty, and the proceeds were paid to the account of the Registrar; but no provision was made in regard to the transfer of any portion of those funds to the Paymaster General.

The first question, then, which arises, upon the amount of the grant having been determined upon, is in what form of instrument shall the order for payment be made.

In the former wars the order for payment consisted of a warrant, signed by the King and countersigned by three Lords of the Treasury and addressed to the Registrar and Deputy Registrars of the Court of Admiralty. Forms of this document are hereto annexed. Upon this warrant being filed in the Court of Admiralty, that Court immediately made an order in the forms hereto annexed directing the amount mentioned in the warrant to be paid by the registrar to the seizer in question, or to his duly appointed agent, the registrar himself having very properly no power to make an order for the payment of any money out of the funds of the Court except under an express order of the Court itself.

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\* During the war with Germany (1914-15) proceeds have been paid to the Paymaster-General, and disbursements have been made by order on him. He has in effect been banker to the Prize Court.

Now the same course should, I apprehend, to a certain extent be adopted in regard to the payments to be made on account of the seizures by Revenue cruisers and Custom House officers during the late war. The Court of Admiralty has sold the prizes, and has received, and is consequently to a certain extent responsible for the proceeds in these cases. Any order, therefore, for a payment out of these proceeds ought to be made through that Court, which has alone any control over the proceeds. Whether, however, their Lordships will order the payment of such proportions, as they may think fit to grant to the seizors, by a Royal Warrant as formerly, or by any other document, is a matter entirely for their Lordship's consideration. The Act, which empowers the Crown to make grants out of the droits to the seizors is the 1<sup>o</sup> Victoriae, Cap. 2, Sec. 12, by which it is enacted "that nothing in this Act contained shall extend or be construed to extend in anywise to impair, affect or prejudice any rights or powers of control, management or direction, which have been or may be exercised by authority of the Crown or other lawful warrant relative to . . . or to any other lawful Act, matter or thing which has been done or may be done touching the said branches or to the granting of any droits of Admiralty or any droits of the Crown, or any part or proportion of any such droits respectively as a reward or remuneration to any officer or officers or other person or persons seizing or taking the same or giving any information relating thereto."\*

I would only further observe that, as the whole of the parties entitled to grants on account of these seizures are officers immediately under the control of the Board of Customs, and as that Board has expressed to me its willingness through its assistant secretary to undertake the distribution of the several grants amongst its officers, I would respectfully suggest that the amounts due on account of each seizure should, when ascertained, be paid over by me to some officer of the Board of Customs, who should be specially appointed to receive the same except, indeed, in such cases as the "Kamtschatka," in which the captors have given a power of attorney to an agent to receive the amount for them.

The distribution will then take place under the directions of the Board of Customs, who, from their personal acquaintance with and control over all the parties, and their knowledge of the manner in which rewards in other cases are usually divided amongst the different grades of officers and men, as well those serving on board Revenue cruisers as those employed in the Custom House, will discharge the duty much more efficiently and much more satisfactorily than I could possibly do. This will be quite in accordance with the practice in former wars; for the Court of Admiralty has never been accustomed to make

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\* Repealed by 1 Edw. 7, c. 4, s. 9 (3).

the distribution of the grants, amongst seizers, unless specially required so to do. It was the agents for the respective captors who formerly received the money from the registry and made the distribution; and I find that the shares due to the Revenue cruisers were for a long period of time paid by the Court to a Mr. Robert Taylor, who is called "the general prize agent to the cutters employed in His Majesty's Revenue of Customs."

In conclusion I would only remark that, when their Lordships shall have determined the proportions which it will be proper to grant to the seizers, as well to Revenue cruisers as to Custom House officers, and the mode in which the payment should be made, it will be proper that I should be informed thereof; and I will then send in a special report in each case, stating the proportions proper to be granted and the persons entitled to share therein. This course is, I think, desirable, as questions will probably arise in some of these cases, as to the persons properly entitled to the reward.

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Note to p. 138.—It appears that the whole proceeds of the "Fama" captured by the "Petrel" were awarded to the captors [Treasury Warrant, 9th September, 1857], as were the whole proceeds to the officers and crew concerned in another capture. The commander, officers, and boatmen of the coastguard at Folkestone also received the whole of the proceeds of the "Kamschatka" [Treasury Warrant, September 14, 1857]. The Inspector and the Surveyor of Customs and five watermen of the Customs of the Port of London were awarded one-fifth of the "Kotka" as a reward for their services, and the British Consul at Elsinore was awarded one-third of one-fourth of the "Fürst Bischoff Albrecht" for giving information which led to the seizure of this vessel on her arrival at Dundee [Treasury Warrants, 16 September, 1857].

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## EXHIBITS TO REPORT.

## EXHIBIT No. 1 ANNEXED TO THIS REPORT.

*Captures at Sea by Revenue Cruisers during the Russian War of 1854.*

Prize.	Captor.		From whom Memorials have been received.	Gross Proceeds.		Net Proceeds.
	Ship.	Commanding Officer.		£	s. d.	
"Fama"	H.M.'s Revenue cruiser "Petrel."	John Hughes, Esq.	No memorial received	2,418	8 9	£ 1,970 13 6
"Froya"	H.M.'s Revenue steamship "Argus."	John Samuel Grandy, Esq.	J. S. W. Grandy, on behalf of himself and the officers and crew of the "Argus."	3,144	15 0	2,713 4 4
"Johannes"	H.M.'s Revenue cutter "Lion."	Lieut. W. Pearn	Messrs. Woodhead and Company, Navy Agents, on behalf of Grey Skipwith, Esq., inspecting commander of the coastguard stations for district of Folkstone.	854	6 0	679 6 9
"Kamtschatka"	Lieut. Grey Skipwith, the inspecting commander of the coastguard at Folkstone, and the chief officer and five boatmen in a boat belonging to that station.		No memorial received from Lieut. Pearn. Messrs. Woodhead and Company, on behalf of Grey Skipwith, Esq., and the officers and boatmen of the coastguard station at Folkstone.	2,230	17 9	1,773 9 1

EXHIBIT No. 1 ANNEXED TO THIS REPORT—continued.  
*Captures at Sea by Revenue Cruisers during the Russian War of 1854—continued.*

Prize.	Captor.		From whom Memorials have been received.	Gross Proceeds.		Net Proceeds.
	Ship.	Commanding Officer.		£	s. d.	
"Livonia" -	H.M.'s Revenue steamer "Argus."	John Samuel Grandy, Esq.	J. S. W. Grandy, on behalf of himself and the officers and crew of the "Argus."	2,010	5 0	£ 1,743 s. 6 d. 2
"Zelus" -	Ditto	Do.	Do.	1,172	6 6	969 18 6
"Ackbar" -	H.M.'s Revenue cruiser, "Frances."	Henry Harvey, Esq.	Henry Harvey, on behalf of himself and the crew of the "Frances."	1,363	8 9	1,102 14 9
	Charles Sholl, officer at Customs, Exeter	and	Charles Sholl, on behalf of himself and others.			
	Officers of coastguards, Exmouth		Captain Newland, inspecting commander of coastguard, on behalf of the officers of the coastguard at Exmouth.			
				13,194	7 9	10,952 13 1

## EXHIBIT No. 2 ANNEXED TO THIS REPORT.

*Captures in Port by Custom House and other Officers during the Russian War of 1854.*

Name of Prize.	Where seized.	By whom seized.	From whom Memorials have been received.	Gross Proceeds.	Net Proceeds.
"Ernst Merck" -	Hull -	Edward Catchpole and Colby Atkinson Davis, Officers of Customs, Hull.	Edward Catchpole and Colby Atkinson Davis.	£ 2,846 13 1	£ 2,173 12 6
"Soglasie" -	Leith -	W. Pugh Gardner, Officer of Customs, Leith.	W. P. Gardner - - - - - Robert Barr Mitchell, Tide Surveyor, Leith.	3,698 3 8	3,320 5 5
"Johann Christoph."	Grimsby -	David Grieve, collector of Customs, Grimsby, and Lieut. Robert John St. Aubyn, Commander of H.M.'s Revenue cruiser "Lively."	David Grieve, Collector of Customs, and Harbord Harbord, late Comptroller of Customs, Grimsby, on behalf of themselves and others. Lieut. R. J. St. Aubyn on behalf of himself and the crew of the "Lively."	3,100 0 0	2,792 4 2
"Christine" -	Liverpool -	Richard Potbury, Officer of Customs, Liverpool.	Richard Potbury, on behalf of himself and four boatmen.	800 0 0	612 0 0
"Rapid" -	Hull -	Colby Atkinson Davis, Officer of Customs, Hull.	Edward Catchpole, Colby Atkinson Davis, and James Carnie, Officers of Customs, Hull.	1,757 18 9	1,560 18 5
"Fürst Bischoff Albrecht."	Dundee -	James Trevenen, Officer of Customs, Dundee.	None received - - - - -	1,174 1 9	967 16 1

## EXHIBIT No. 2 ANNEXED TO THIS REPORT—continued.

*Captures in Port by Custom House and other Officers during the Russian War of 1854—continued.*

Name of Prize.	Where seized.	By whom seized.	From whom Memorials have been received.	Gross Proceeds.	Net Proceeds.
"Atlantic" -	Leith -	Robert Barr Mitchell, Officer of Customs, Leith.	R. B. Mitchell - W. P. Gardner, Collector of Customs, Leith. J. O. W. Fabert, Ship Chandler, Liverpool. (For necessities supplied to Prize). None received - - - -	£ s. d. 3,430 11 11	£ s. d. 3,141 11 11
"Rapida" -	Liverpool -	Richard Potbury, Officer of Customs, Liverpool.	None received - - - -	2,111 14 1	1,872 8 6
"Kotka" -	London -	David Samuel Harding, and Robert Grey, Officer of Customs, London.	None received - - - -	6,828 8 4	6,405 15 6
"Odessa" -	Hull -	Edward Catchpole and Colby Atkinson Davis, Officers of Customs, Hull.	Edward Catchpole and Colby Atkinson Davis.	1,960 0 0	1,697 9 7
"Franz Drake" -	London -	David Samuel Harding, Officer of Customs, London.	None received - - - -	1,327 17 11	1,070 6 2
"Nina" -	Ipswich -	Frederick Freshfield, Officer of Customs, Ipswich.	Frederick Freshfield, and William Tickner, Officer of Customs, Ipswich.	1,500 0 0	1,139 13 2
"Lisette" -	London -	John Edwin Burt, Officer of Customs, London.	None received - - - -	1,810 0 0	1,547 17 9
				31,985 9 6	28,301 19 2





## EXHIBIT No. 4 ANNEXED TO THIS REPORT.

*Form of Warrant.*

GEORGE R.

WHEREAS the Commissioners of Our Treasury have represented unto Us that it hath been made appear unto them by a report of Our Procurator General with the concurrence and advice of Our Advocate General upon the memorial of John Crickett, Marshal of Our High Court of Admiralty, that the memorialist having received information that the vessel "De Jonge Helena," Paulus Boot, master, had arrived in the month of March 1798 in the River Thames from Dortrecht, in Holland, laden with a cargo of oats which she had delivered and was about to proceed to Flushing, and also that the said vessel was navigated with false papers and was Dutch property, the memorialist on the 9th March 1798 seized her accordingly in the River Thames and the papers belonging to her were delivered up in order that the proper legal steps might be taken for bringing the said vessel to adjudication; that on the 19th of the said month of March proceedings were instituted by Our Procurator General in Our Office of Admiralty against the said vessel as prize and as droits and perquisites of Our said Office of Admiralty and as having been taken and seized by the memorialist; that a claim was given in the Court of Admiralty for the ship as the property of Prussian subjects, and that on the 6th January 1799 the judge of the said Court was pleased to condemn the said ship as a droit of Admiralty and the nett proceeds of the sale thereof, amounting to the sum of 173*l.* 9*s.* 8*d.*, have been paid into the registry of the said Court where the same now remains subject to Our disposal. And whereas Our said Commissioners have submitted unto Us, that considering the smallness of the proceeds remaining in this case and that the law charges and other expenses are to be deducted therefrom, and having reference to the decision of the Court in the case of the "Nicolaus," it may not be improper to grant the whole proceeds, after payment of the aforesaid charges and expenses, as a reward to the Marshal. And We being graciously pleased to consent thereto, Our will and pleasure is and We do hereby direct, authorise, and require you to pay unto the said John Crickett, Marshal of Our High Court of Admiralty, or to his agent lawfully appointed to receive the same, the said sum of one hundred and seventy three pounds nine shillings and eight pence, after deducting all expenses incurred upon the part of Government, as a reward for having seized the vessel in question. And this shall be as well to you as to all others herein concerned a sufficient warrant. Given at Our Court at

Saint James's this 14th day of May 1803 in the forty-third year of Our reign.

By His Majesty's command,  
 (Signed) HENRY ADDINGTON.  
 GEORGE THYNNE.  
 NAT BOND.

To the Registrar of our Court  
 of Admiralty.

EXHIBIT NO. 5 ANNEXED TO THIS REPORT.

*Form of Warrant.*

GEORGE R.

WHEREAS the Commissioners of Our Treasury have represented unto Us that it hath been made appear unto them by a report of Our Procurator General with the concurrence and advice of Our Advocate General that David Milne, Esquire, commander of Our ship "Seine," was in the month of February 1799 cruising in the channel against our enemies, but more particularly with a view of capturing some vessels that were expected to arrive from Batavia which he had received information were expected in the Channel, that on the 13th of the said month he captured the "Graf Bernstorf," Gerrit Belner, master, laden with sugar and coffee from Batavia, bound by her papers to Copenhagen, and conducted her to Spithead, that he transmitted the whole of the ships' papers and preparatory examinations to the Admiralty Proctor, by whom proceedings were commenced against the said ship and cargo on the 26th of the said month of February, on which day a claim was given for the ship and 130,000 lbs. of sugar as the property of J. L. Schmidt, of Tranquebar, merchant, and afterwards a claim for the general cargo on behalf of C. S. Blacks, Widow, and Company, of Copenhagen, that various proceedings were had in the Court of Admiralty, and amongst other things the ship and 130,000 lbs. of sugar were condemned on the 27th June 1797 as good and lawful prize, and as droits and perquisites of Us in Our Office of Admiralty, since which the general cargo was also condemned as droits of Admiralty, from which decree the claimants appealed, but a sentence of condemnation was made by the Commissioner of Appeals in prize causes on the 23rd April 1803 and the net proceeds amounting to 25,458*l.* 1*s.* 5*d.* now remain in the Registry of the High Court of Appeals for Prizes at Our disposal. And whereas Our said Commissioners have submitted to Us that a grant of two-thirds of the proceeds of the said ship and cargo may not be an improper reward to be granted to the captors, after deducting all expenses on the part of Government, to which We being graciously pleased to condescend, Our will and pleasure is, and We do hereby direct, authorise, and require you to pay unto the said David

Milne, and the officers and crew of our ship "Seine," or to the agent or agents lawfully appointed for their use and benefit, two-thirds of the proceeds of the said ship and cargo, after deducting all expenses on the part of Government, to be distributed amongst them in such proportions as are established in Our Navy for the distribution of prizes. And this shall be to you and to all others herein concerned a sufficient warrant. Given at Our Court at Saint James's this 7th day of June 1803, in the forty-third year of Our reign.

By His Majesty's command,

(Signed) HENRY ADDINGTON.  
GEORGE THYNNE.  
NAT BOND.

To the Registrar of the High Court  
of Appeals for Prizes.

EXHIBIT No. 6 ANNEXED TO THIS REPORT.

*Form of Minute ordering Payment of Proportion  
granted by King's Warrant.*

"LA MARIE HELENE."

J<sup>r</sup>. Turbe, Mr.

On the 28th day of July 1804, N. Gosling exhibited a warrant under His Majesty's sign manual dated 22nd June 1804, and countersigned "Lovaine," "Fitz Harris," and "C. Long," and directed to the Registrar of His Majesty's High Court of Admiralty, authorising and requiring him to pay unto John Longhurst, the commander, or to his lawful attorney for the use of himself, and the owners, officers, and crew of the private ship of war, the "General Small," two-thirds of the net proceeds of the said ship and goods condemned as droits of Admiralty, after deducting the expenses incurred on the part of Government, and N. Gosling alleged such two-thirds to amount to the sum of two hundred pounds fourteen shillings and seven pence (200*l.* 14*s.* 7*d.*), after deducting the sum of forty-four pounds seven shillings and ten pence (44*l.* 7*s.* 10*d.*), being the amount of the Admiralty Proctor's bill as reported by the Registrar of the Court, and the judge at his petition by interlocutory decree directed the said sum of two hundred pounds fourteen shillings and seven pence to be paid to Samuel Dobree, of Old Broad Street, London, merchant, the attorney lawfully authorised to receive the same. And the judge, at the petition of Gosling directed the said sum of forty-four pounds seven shillings and ten pence to be paid out to him, and the remaining one-third, amounting to one hundred pounds seven shillings and three pence (100*l.* 7*s.* 3*d.*) to be paid to the Receiver General of the Droits of Admiralty.



## EXHIBIT No. 7 ANNEXED TO THIS REPORT.

*Form of Minute ordering Payment of Proportion  
granted by King's Warrant.*

"Four Sisters." L. Columbel, Master.

On the 9th day of August 1804 Gostling alleged the amount of his bill of costs as taxed to be eighty-six pounds fifteen shillings and sixpence (86*l.* 15*s.* 6*d.*). And the surrogate at his petition directed the said sum to be paid to him out of the sum of three thousand three hundred and seventy pounds twelve shillings and sixpence (3,370*l.* 12*s.* 6*d.*) brought in as the proceeds, and at the petition of Cobb directed the sum of one thousand six hundred and forty-one pounds eighteen shillings and sixpence (1,641*l.* 18*s.* 6*d.*), being a moiety of the said sum after deducting such expenses to be paid out to Mr. Robert Taylor pursuant to His Majesty's warrant.

## APPENDIX II.

## TREASURY PRÉCIS.

*Mr. H. C. Rothery on Naval Prize, 31st March 1857.*

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- 14 All prize belongs to the Sovereign, and unless granted by the Sovereign would be droit of the Crown.
- 16 By grant from the Crown, however, some of these rights are ceded to the Lord High Admiral.
- 19 These are defined as "All prizes captured *during hostilities*, either in port or by non-commissioned vessels or persons."
- 21 The distribution of these as well as of droits of the Crown is at the discretion of the Treasury.
- 23 The Crown's interest during war is usually ceded to commissioned captors by a prize proclamation.

Specimens of grants are given—

- 29 Temp-Henry VIII. ;
- 31 Anno 1649 ;
- 33 4 & 5 William and Mary ;
- 36 and from a summary of the practice in these early times it appears that privateers were greatly favoured as compared with King's ships.
- 39 The first Prize Act was the 6 Anne c. 13. It gave the whole benefit to duly commissioned captors.
- 45 Without the prize proclamation all droits of the Crown
- 46 remain at the disposal of the Crown, and a prize proclamation does not touch the droits of Admiralty.

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- 48 The proclamation does not include the following droits of the Crown :—
1. When the captures are effected by conjoint forces.
  2. When they are made before hostilities.
- 57 The amount of grants from droits of the Crown not included in the proclamation is sometimes referred for the consideration of the Admiralty Court ; but generally the Treasury has decided, and has issued its warrant to the registrar and deputy registrar of the Court after receiving the advice of the Queen's Advocate through the Queen's Proctor upon memorials from the captors.
- 67 Mr. Rothery divides the droits into three classes :—
1. Those captured with an enemy's fortress or possession.
  2. Those captured at sea.
  3. Those captured in port.
- 74 I. In the case of the first, the whole had always been given to the captors.
- II. *Droits captured at sea* are taken either—
- 85 1. By King's ships. If the prize proclamation has issued the whole, of course, goes to the captors ; if not, the Crown makes an award.
- 87 2. By privateers. The same is the case if they are duly commissioned against the particular country to which the prize belonged.
- 93 3. By Revenue or Excise vessels. Awards have in these cases been made out of a common fund of proceeds.
- 101 4. By vessels non-commissioned. To these it has been usual to grant a proportion of the proceeds.
- 104 The grant to any of the foregoing vessels has to be determined if the capture be made—
- (1) Before hostilities by any ship.
  - (2) During hostilities if no prize proclamation have issued.
  - (3) Or if the capture have been made by a privateer or Revenue cruiser not *duly* commissioned for the purpose, or by a purely non-commissioned captor,
- 105 A view is taken of early grants to *non-commissioned*
- 115 ships, and of grants for captures *before hostilities*.
- 135 From 1797 to 1804 (Spanish war) the proportion given for the latter class of captures was, to whatever ship, almost always two-thirds.

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- 147 The same two-thirds was extended to captures by  
 149 privateers *during* hostilities, and to captures during  
 hostilities by non-commissioned vessels.
- 156 Early in the war of 1803 against France and Holland  
 the question of grants to tenders of King's ships for  
 168 captures during hostilities was discussed, and resulted  
 in their receiving two-thirds of the proceeds.
- 176 About the same time it was decided that for captures at  
 sea *during hostilities*, or *after embargo before hostilities*,  
 188 non-commissioned captors as well as privateers should  
 202 receive one-half, while King's ships obtained two-thirds.
- 183 The practice of granting one-half to Revenue cruisers for  
 captures *during* hostilities was soon extended to  
 captures *before* hostilities.
- 184 And to captures before hostilities by purely non-  
 commissioned vessels.
- 203 Droits of Admiralty and of the Crown were granted in  
 like proportions.
- 208 On the breaking out of the Spanish war in 1805 a  
 distinction became necessary between bullion or specie  
 and other cargo, and also between captures of greater  
 and of less value.
- 212 As to bullion, one-fourth was made the rule for what  
 might be taken before hostilities by King's ships, and  
 219 one-fifth by privateers.
- 225 The amount of the capture influenced the grants after  
 239 the beginning of 1806, and was made a main element  
 in the award.
- 242 In January 1808, a rule was first laid down as follows  
 for King's ships:—  
     For captures under 300*l.*, nine-tenths.  
     "          over 10,000*l.*, one-half.  
     In the case of privateers the rates were fixed :—  
 251      For under 300*l.*, four-fifths.  
 254      10,000*l.* to 20,000*l.*, two-fifths.  
 255      Over 20,000*l.*, one-eighth.
- 257 These rates, for King's ships and for privateers, were  
 maintained to the peace in 1815.  
 With regard to captures at sea *before embargo or orders*  
*to detain*.
- 266 Until 1808, the same awards were made as if there had  
 been an embargo, &c.
- 274 But abuses were frequent, and in 1808 there was in  
 consequence great jealousy in making grants in these  
 cases.  
 Where such cases arose from the issue of an embargo  
 when the vessel had been released from the original  
 charge and had been recaptured under embargo by a  
 civil officer, before her departure one-eighth was given  
 285 in two cases, in one of which a King's ship, and in the

- Page  
 289 other a Revenue cruiser had been the original captor (to the recaptor nothing).  
 290 This view was soon altered, and *no* grant allowed in two  
 295 other cases shortly after, nor in any subsequent case.  
 296 In cases of captures at sea previous to embargo where the prize remained in the captor's hands until an embargo issued, no distinction was at first made on account of the non-existence of an embargo in the first instance. This was exemplified in the cases of King's ships.  
 299 In 1808, however, a distinction was thought proper, and the grants to King's ships in such cases were thenceforward one-fourth only instead of two-thirds.  
 307 In the case of a privateer or a Revenue cruiser from 1808 till about a year nothing was allowed for such captures.  
 320 But in 1809 one-fourth was granted in one case, and in 1810 the same in one case under special circumstances as to the date of the capture, but the rule was at the same time laid down that, excepting in extraordinary cases, no grant should be made.  
 331  
 333 In the two following years, however, there was some relaxation of this rule, and one-fifth was frequently allowed to privateers, provided the grounds of the original capture before embargo were held to have justified the act.  
 351  
 387 In the Turkish war, 1807, there being no proclamation, all prize remained droit of the Crown, as if taken before hostilities. The same proportions were granted both to King's ships and to privateers as if the captures had been under an embargo, and according to the rule adopted in the Prussian and Danish cases above mentioned.  
 389  
 392 The same proportions were granted in the Italian and Russian wars, 1807.  
 In the American War, in consequence of the great *destruction* of prizes, to avoid encumbrance to the fleet sent out under provisional orders the ships on that station were allowed two-thirds and nine-tenths of the remaining one-third, but this advantage was not granted to other squadrons for *their* captures before declaration of war whether before or after embargo.  
 411  
 415  
 422 In regard to *armed vessels* taken the practice was to grant the whole proceeds to the captors, under whatever circumstances of war, and by whatever vessel.  
 437 The general summary then of the mode of dealing with droits captured at sea was as follows :—  
 For a ship of war after an engagement the whole proceeds.



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For a merchant vessel without resistance—before  
1796 various—often five-sixths, nine-tenths, or  
the whole.

(135 In 1796 it began to be two-thirds to any ship, unless in  
& seq). very small cases, when the whole was given.

(188, In 1803 & seq—

202). Two-thirds to King's ships ;  
One-half to privateers.

In 1805, &c., *as to bullion*—

One-fourth to King's ships ;

(212) One-fifth to privateers ;

but as to ordinary proceeds, two-thirds and one-half.

Afterwards, where the proceeds were large, one-half to  
King's ships and one-third to privateers and others.

And 1806–7, &c., the finally established practice, viz. :—

441 (I.) If after embargo, or under orders, or if by non-  
commissioned vessel during war :—

King's. Others.

	If under 300 <i>l.</i>	-	Nine-tenths.	Four-fifths.
(242 to	300 <i>l.</i> to 10,000 <i>l.</i>	-	Two-thirds.	One-half.
255).	10,000 <i>l.</i> to 20,000 <i>l.</i>	-	One-half.	Two-fifths.
	Above 20,000 <i>l.</i>	-	One-half.	Three-eighths.

(II.) But if before embargo or orders—

295 1. If the property had been released before  
embargo, nil.

(307 & 333). 2. If not, and the original detention justifiable,  
one-fourth ; one-fifth without reference to the  
amount of property.

(III.) Under the special circumstances of the American  
squadron :—

If under 300*l.*, nine-tenths + nine-tenths of the  
one-tenth.

(417) 300*l.* to 10,000*l.*, two-thirds + nine-tenths of the  
one-third.

Above 10,000*l.*, one-half + nine-tenths of the one-  
half.

453 III. *Captures in Port* :—

461 1. If by the King's ships during hostilities one-half  
generally given.

471 2. If by governor of colonies or military commander,  
472 one-half always.

3. If by the King's ships under embargo before hos-  
tilities, one-half also.

488 4. If by naval officers living on shore and under  
embargo, one-half always.

491 5. If by Custom House officers or others during war,  
no general rule adopted, but the circumstances  
of numerous decisions are set out in the report.

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538

From there it appears:—

- (1) That it was not usual to give any fixed proportion, but a round sum.
- (2) That these sums usually amounted to from about one-fourth to one-third of the proceeds, with some modifications having reference to their amount.

*Russian War, 1854:—*

544      There was no effective embargo:—

1. As to captures by Queen's ships (which were alone commissioned).

The Prize Act was 17 Vict. c. 18.

The Proclamation 29 March 1854.

These gave the whole proceeds, as in other wars.

But the prizes were to be at once made over to the Marshal of the Admiralty Court.

In these cases there is nothing for the Treasury to do. The proceeds are being distributed.

- 553      2. As to Revenue cruisers (which were the only non-commissioned vessels by which captures were effected, and which took property to the amount of 10,952*l.* 13*s.* 1*d.*).

560      One-half would appear to be proper in all cases which occurred, unless certain special reasons (set forth in the report) should be held to alter this view.

### 3. *Seizures in Port:—*

572      According to the precedents before given, from one-fourth to one-third would be adopted; but the largeness of the value in these cases might make one-fourth enough for all. Except perhaps in one very large and another very small capture, where one-fifth and one-third might be respectively proper.

584      A proportion of the proceeds would be preferable to a fixed sum.

588      The sum in the hands of the Paymaster-General on account of Russian prize is 58,413*l.* 3*s.* 11*d.* He holds this to the credit of the Court of Admiralty; and any order upon it should be made through the Court.  
590-1

## APPENDIX III.

## OFFICIAL CORRESPONDENCE ON PRESENTATION OF REPORT.

(5941.)

16th April 1857.

My Lords have before them the elaborate report which has been prepared by the Registrar of the High Court of Admiralty on the subject of naval prize in pursuance of the request contained in the letter from this Board dated 27th October 1854 in reference to applications received for grants out of the proceeds of prizes captured during the late war.

Before my Lords give a full consideration to this document they desire that it be transmitted with the accompanying register to the judge of the High Court of Admiralty with a request that he will give this Board the advantage of his opinion upon the several recommendations therein contained.

(Signed) C. E. TREVELYAN.

18, Eaton Place, S.W.,

Sir,

27th May 1857.

I BEG leave to inform you that, in compliance with the request contained in your letter of the 17th of April last, I have read and considered the report prepared by the Registrar of the High Court of Admiralty upon the subject of naval prizes.

In that report the whole subject has been most laboriously investigated, and all the important facts necessary to give the Lords Commissioners of Her Majesty's Treasury full and complete information carefully and elaborately stated.

With reference to the various classes of cases which have occurred in former wars, and the scale of remuneration fixed by custom to each class, I take the liberty of suggesting for the consideration of their Lordships that the rules so fixed should be selected from the report, and after consideration be confirmed as the rules applicable to all similar cases and not to be departed from except when extraordinary circumstances clearly establish just cause for exception.

With respect to the Russian war of 1854, and the division entitled as to *Révenue* cruisers, I see no reason why their Lordships should depart from the practice in former wars by granting the whole of the proceeds, instead of a proportionate part according to custom.

With respect to seizures in port by Custom House officers and others, I entirely concur with Mr. Rothery in thinking one-fourth of the proceeds an ample remuneration, with the two exceptions mentioned by him, one-fifth of the "*Kotka*" where

the proceeds exceed 6,000*l.*, and one-third of the proceeds where they amount only to 612*l.*, viz., the "*Christine*."

I am,

Your faithful Servant,

(Signed)      STEPHEN LUSHINGTON.

(8782.)

17 June 1857.

My Lords have again before them the Report of the Registrar of the High Court of Admiralty upon the practice which existed during former wars in reference to the distribution of naval prize, which was called for by the letter from this Board, dated 27th October 1854, as necessary to enable my Lords to determine what awards should be made in the several cases of capture during the late war with Russia, the documents relating to which were referred to the registrar as received.

Their Lordships have also considered the reply of the judge of the High Court of Admiralty to the reference which was made to him for his opinion upon the recommendations contained in Mr. Rothery's report for dealing with the several cases now pending.

Before giving any directions on the subject, my Lords consider it due to Mr. H. C. Rothery to express their sense of the valuable service he has rendered by placing on record a comprehensive and clear statement of the course of proceeding adopted in former wars in reference to the important subject of naval prize, which will not only enable their Lordships to dispose satisfactorily of the claims now before them, but may also be referred to on future occasions with much public advantage.

The claims upon which my Lords have to decide belong to two classes. Captures by Revenue cruisers, and seizures in port by Custom House officers and others.

It appears that according to the practices of the last war the rule laid down with regard to prizes captured by Revenue cruisers was tenfold:—First, so far as regarded those vessels not being commissioned, but still left to the pursuit of their ordinary duty, one-half only of the prizes which they might accidentally capture when in the performance of that ordinary duty was awarded, and paid over to a common fund hereinafter referred to. According to Lord Stowell this policy, of allowing only one-half in such cases, was adopted with the view of not offering too great an inducement to vessels which the Government wished to be engaged rather in the protection of the revenue than in searching for prizes, to neglect their primary and specific duty. The second mode of treatment was in cases where those vessels were directed by the Admiralty to search for enemies' vessels and were for such purpose furnished with letters of marque; in these cases the whole amount of the prize was allowed as if they had been vessels of war. But here, again, the proceeds were paid into a general fund. According to



Lord Stowell the practice of allowing one-half only in the former cases, was in part resorted to for the purpose of leaving a margin in the case of such captures, from which Revenue cruisers which had done meritorious service but had not actually succeeded in capturing any prizes, might be rewarded; and that it does not appear that the Crown intended to profit by the remaining half, but to create a fund from which other deserving officers and others might be rewarded.

So far as can be made out the fund in question, when distributed, was dealt with on the principle that those vessels which sailed with letters of marque were entitled like men-of-war to the full amount, and those which were not commissioned as entitled to one-half.

In applying these principles to the late war, it appears to my Lords right to make the following distinction. No letters of marque were granted either to Revenue cruisers or private ships, and therefore no Revenue cruisers were actually commissioned. But the vessels to which letters of marque would have been granted in the last war sailed in pursuit of enemies' ships only under the direct orders of the Admiralty in the late war; in both cases their occupation in capturing prizes was under the direct sanction and on the orders of the Government, which seems to establish the distinction laid down by Lord Stowell. In addition to this these vessels engaged in the late war were commanded by commissioned officers. My Lords are therefore of opinion that they should be treated in the same way as Revenue cruisers sailing with letters of marque were treated in the last war, or as men-of-war were treated in the late war, and that they may be allowed the full amount of their captures.

Since the date of the captures referred to the Revenue coast fund has been transferred from the Customs to the Admiralty, and the cruisers are now all commissioned ships. Notwithstanding this fact, my Lords are of opinion that the distinction laid down by Lord Stowell should still be adhered to, and that in the event of a war those vessels only which are directed to search for enemies' vessels should be considered as having a claim to the full amount of the capture, while those which are left in the pursuit of their ordinary duty only, and in the pursuit of such have the good fortune to capture prizes, should be treated exactly as the non-commissioned vessels were while the former was under the Customs, and be entitled to one-half.

As regards seizures in port, my Lords concur in opinion with the judge of the High Court of Admiralty and Mr. Rothery that according to a just application of the principles established during former wars, one-fourth of the net proceeds should be granted excepting in the case of the "*Christine*" in which the proceeds (612*l.*) are so small that one-third may properly be awarded, and in that of the "*Kotka*" where the proceeds are so considerable (above 6,000*l.*) that the grant should be limited to one-fifth.

My Lords are accordingly pleased to direct that a copy of the foregoing minute be transmitted to the Registrar of the High Court of Admiralty, with directions to furnish to this Board, as suggested by this Report, a statement of the sums payable in conformity therewith in each of the cases which have been referred to him upon the receipt of which their Lordships will be prepared to take the proceedings necessary for giving effect to the several grants.

And that my Lords approve of the Registrar's suggestion in reference to the distribution of the sums due to officers of Her Majesty's Customs.

Also transmit to Mr. Rothery a copy of Dr. Lushington's letter of the 27th ulto. and state that my Lords concur in the principle of the recommendation contained in the third paragraph, and they request that he will prepare in a comprehensive but succinct form a draft of a set of rules for future guidance in cases of naval prize, whether of the description of those now under award or of any others treated of in the Report, which draft, after it has undergone the revision of Dr. Lushington, may be placed on record to be referred to, if other similar occasions should unhappily arise.

Transmit a copy of this minute to the judge of the High Court of Admiralty with reference to his letter of the 27th ultimo.

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